


TD 1999/D97 - Income tax: capital gains: if: you acquire land and a dwelling (dwelling A) on or after 20 September 1985 which you use as your main residence and do not use for income producing purposes; and you subdivide the land into 2 blocks and build another dwelling (dwelling B) on the subdivided vacant land and this dwelling becomes your main residence; and you choose not to apply section 118-150 of the Income Tax Assessment Act 1997 (about building, repairing or renovating a dwelling) for dwelling B; and you sell dwellings A and B; are you entitled to the full main residence exemption in Subdivision 118-B for both dwellings?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D97 - Income tax: capital gains: if: you acquire land and a dwelling (dwelling A) on or after 20 September 1985 which you use as your main residence and do not use for income producing purposes; and you subdivide the land into 2 blocks and build another dwelling (dwelling B) on the subdivided vacant land and this dwelling becomes your main residence; and you choose not to apply section 118-150 of the Income Tax Assessment Act 1997 (about building, repairing or renovating a dwelling) for dwelling B; and you sell dwellings A and B; are you entitled to the full main residence exemption in Subdivision 118-B for both dwellings?*

This document has been finalised by TD 2000/13.



Draft Taxation Determination

Income tax: capital gains: if:

- **you acquire land and a dwelling (dwelling A) on or after 20 September 1985 which you use as your main residence and do not use for income producing purposes; and**
- **you subdivide the land into 2 blocks and build another dwelling (dwelling B) on the subdivided vacant land and this dwelling becomes your main residence; and**
- **you choose not to apply section 118-150 of the *Income Tax Assessment Act 1997* (about building, repairing or renovating a dwelling) for dwelling B; and**
- **you sell dwellings A and B;**

are you entitled to the full main residence exemption in Subdivision 118-B for both dwellings?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

1. No.

Dwelling A

2. If you sell dwelling A, a CGT event A1 (about a disposal of a CGT asset) in section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997) happens. On CGT event A1 happening to dwelling A, if you choose to not apply section 118-150 of the ITAA 1997 (about building, repairing or renovating a dwelling) for dwelling B, you are entitled to a main residence exemption for dwelling A under section 118-110 throughout the entire period of ownership that it was your main residence. The exemption also applies during that period, to adjacent land sold with dwelling A because it had been used primarily for private or domestic purposes in association with that dwelling throughout the ownership period.

3. Section 118-140 allows you to treat both dwelling A and dwelling B as your main residence after dwelling B actually becomes your main residence if you have acquired an ownership interest in it and if you still have your ownership interest in dwelling A. The maximum period you may treat both dwellings as your main residence is six months, ending when your ownership interest in dwelling A ends.

4. If dwelling B has actually been your main residence for more than six months when your ownership interest in dwelling A ends, there is a part of your ownership period for dwelling A for which you are not entitled to the main residence exemption.

Dwelling B

5. On the sale of dwelling B you are only entitled to a partial main residence exemption under section 118-110, when read with section 118-185. Because section 118-110 only allows you to disregard a capital gain or capital loss for a dwelling which is your **main** residence, you are not entitled to a full exemption for **both** dwelling A and dwelling B throughout their entire ownership period. In accordance with paragraph 118-125(a) your ownership period of dwelling B commences from when you have an ownership interest in the land on which the dwelling is later built. Apart from the operation of section 118-140, dwelling B is only your main residence from when it actually becomes your main residence. It is not your main residence for the whole of its ownership period. Therefore, you are only entitled to a partial exemption for any capital gain or capital loss you make on the sale of dwelling B.

6. Section 118-140 operates if you have acquired an ownership interest in dwelling B which is to become your main residence and you still have an ownership interest in dwelling A. Dwelling B can be treated as your main residence for a maximum period of six months, ending when your ownership interest in dwelling A ends.

7. The partial exemption (under section 118-110 read with section 118-185) applies to dwelling B which includes the land immediately under dwelling B: paragraph 118-115(1)(c). Dwelling B does not include land adjacent to dwelling B unless it satisfies section 118-120.

8. Subsection 118-120(1) provides that the main residence exemption in Subdivision 118-B applies to land that is adjacent to a dwelling (if the same CGT event happens to the land or your ownership interest in it) to the extent that you used the land primarily for private or domestic purposes in association with the dwelling.

9. The land adjacent to dwelling B is only used for part of your period of ownership of dwelling B primarily for private or domestic purposes in association with dwelling B. Before constructing dwelling B and it becoming your main residence, that land is used in association with dwelling A. Only a portion of the capital gain or capital loss you make on the adjacent land associated with dwelling B may be disregarded under subsection 118-120(1).

Note

10. Nothing said in this draft Taxation Determination for capital gains purposes affects the operation of the general provisions of the income tax law, if applicable, to the sales of the dwellings.

Example

11. *John purchases one hectare of land on 1 May 1996 for \$200,000. There is an established home on the land. He immediately moves into the home and uses it as his main residence (dwelling A). On 1 December 1997, John subdivides the land and commences to build a new home on the back block of land. This house is completed on 1 May 1998 at a cost of \$150,000. John*

moves into the new house and it actually becomes his main residence (dwelling B). On 1 July 1998, John sells the original house and land for \$250,000. On 1 May 1999, John moves interstate and sells the new home for \$300,000.

Dwelling A

12. *John has obtained advice that when he purchased the home in 1996, the land was worth \$140,000 and the home \$60,000. The land has been subdivided and the cost of the land attributable to dwelling A is \$70,000.*

13. *Ignoring other costs and indexation, when CGT event A1 happens John makes a capital gain of:*

$$\$250,000 \text{ less } \$130,000 = \$120,000.$$

14. *Section 118-110 together with section 118-140 allow John to disregard the capital gain on dwelling A in full.*

Note: John only gets a full exemption in this example as he satisfies the conditions in section 118-140. If he sold dwelling A in January 1999 he would not get an exemption for the period from 1 May 1998 to 1 July 1998.

Dwelling B

15. *The cost of dwelling B is \$70,000 (land) and \$150,000 (building).*

16. *John makes a capital gain of:*

$$\$300,000 \text{ less } \$220,000 = \$80,000.$$

17. *John's ownership period for dwelling B commences on 1 May 1996 when the land was acquired. Dwelling B was John's main residence from 1 May 1998 to 1 May 1999. In addition, he may treat it as his main residence for the period from 1 January 1998 to 1 July 1998 in accordance with section 118-140. Therefore, John disregards the following portion of the capital gain on dwelling B and the adjacent land:*

$$\frac{485 \text{ days}}{1095 \text{ days}} \quad x \quad \text{capital gain made on dwelling B (including the land under the dwelling and the adjacent land).}$$

Note: the extent to which the adjacent land has been used primarily for private or domestic purposes in association with dwelling B is also 485/1095.

Note

18. *If John sells dwelling A on 1 January 1999, section 118-140 does not extend the period for which John can claim the main residence exemption in regard to dwelling B as during that period it is actually his main residence.*

Your comments

19. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by Date:

17 December 1999

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Commissioner of Taxation

17 November 1999

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TD 1999/D98

Subject references:

adjacent land; capital gain; capital loss; CGT event A1; dwelling; exemption; land; main residence; partial exemption; subdivision

Legislative references:

ITAA 1997 104-10; ITAA 1997 118-B; ITAA 1997 118-110; ITAA 1997 118-115(1)(c); ITAA 1997 118-120; ITAA 1997 118-120(1); ITAA 1997 118-125; ITAA 1997 118-125(a); ITAA 1997 118-135; ITAA 1997 118-140; ITAA 1997 118-150; ITAA 1997 118-185

Case references:

ATO references:

NO 99/16029-2

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