


TD 1999/D98 - 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 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/D98 - 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 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 2000/14.



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 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 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 only for your period of its ownership while dwelling A was your main residence - but that period ends when you begin to treat dwelling B as your main residence in accordance with section 118-150.

3. Under section 118-150, dwelling B is treated as your main residence for the shorter of 4 years before it actually becomes your main residence or the period starting when you acquired your ownership interest in the land on which dwelling B was later built and ending when dwelling B became your main residence.
4. From the time dwelling B is treated as your main residence, you cannot treat dwelling A as your main residence, even though you may be still living there. You cannot treat more than one residence as your **main** residence at the same time except to the extent that section 118-140 (about changing main residence) applies. The maximum period you may treat both dwellings as your main residence under section 118-140 is six months, ending when your ownership interest in dwelling A ends.
5. On the sale of dwelling A, you are only entitled to a partial main residence exemption under section 118-110, when read with section 118-185. The partial exemption applies to dwelling A including the land immediately under dwelling A: paragraph 118-115(1)(c). Dwelling A does not include land adjacent to dwelling A except as provided for in section 118-120.
6. 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.
7. From the time that you begin to treat dwelling B as your main residence in accordance with section 118-150, the land adjacent to dwelling A is treated as no longer being used primarily for private or domestic purposes in association with dwelling A. Therefore, the partial main residence exemption for dwelling A only applies to the land adjacent to dwelling A for your period of its ownership while it was being used primarily for private or domestic purposes in association with dwelling A - but that period ends when the land begins to be used primarily for private or domestic purposes in association with dwelling B.

Dwelling B

8. You are entitled to disregard any capital gain or capital loss you make on the sale of dwelling B for that part of your ownership period that dwelling B is treated as your main residence under section 118-150 (refer to paragraph 1), together with the period that it is actually your main residence, provided dwelling B is not being used for income producing purposes. Your ownership period of dwelling B commences when you have an ownership interest in the land on which dwelling B is later built.
9. Land adjacent to dwelling B is considered to be used primarily for private or domestic purposes in association with dwelling B from the time dwelling B is treated as your main residence under section 118-150. The extent to which the land is used primarily for private or domestic purposes in association with dwelling B after it actually becomes your main residence is a question of fact.

Note 1

10. We take the view that the application of subsection 160ZZQ(5) and (5A) of the *Income Tax Assessment Act 1936* (ITAA 1936) gives the same result as outlined in this draft Taxation Determination. However, it should be noted that for the purposes of the ITAA 1936, land under a dwelling is properly treated as part of adjacent land for the purposes of subparagraphs 160ZZQ(3)(a)(i) and (ii). In addition, for the purpose of the subsection 160ZZQ(5A) election, subparagraph 160ZZQ(5)(b)(i) is satisfied because the land is the block of subdivided land on which there was not a dwelling at the time of acquisition.

Note 2

11. If there is an existing dwelling on land (dwelling A), you subdivide the land into 2 blocks and you construct a new dwelling (dwelling B) on the vacant block and this dwelling becomes your main residence, section 118-150 operates in relation to the subdivided land as if there was no existing dwelling on the subdivided land when you acquired it. This means that subsection 118-150(5) does not operate to alter the start of the period for which you may choose dwelling B to be your main residence in subsection 118-150(2) and paragraph 118-150(4)(b). The period for which you may choose to apply the main residence exemption under subsection 118-150(2) and paragraph 118-150(4)(b) commences from when you acquired your ownership interest in the land, namely, the date you acquired the original land.

Note 3

12. 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 1

13. 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 immediately and uses it as his main residence (dwelling B). On 1 July 1998, John sells dwelling A and land for \$250,000. On 1 May 1999, John moves interstate and sells dwelling B for \$350,000.

14. At the time of selling dwelling A, John seeks advice from his accountant regarding the capital gains implications of selling dwelling A. His accountant advises him that because he is likely to keep dwelling B for some time and make a greater capital gain at that time, he may wish to take advantage of section 118-150 for dwelling B. John decides he will choose to apply 118-150 for dwelling B.

Dwelling A

15. 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 was subdivided and the cost of the land attributable to dwelling A is \$70,000.

16. Ignoring other costs and indexation, John makes a capital gain when CGT event A1 (the disposal) happens of:

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

17. As John has applied section 118-150 for dwelling B, dwelling B is treated as his main residence from 1 May 1996. The only time that dwelling A can be John's main residence is the period from 1 January 1998 to 1 July 1998, being the 6 months as provided for in section 118-140 (changing main residences). The land adjacent to dwelling B is also used primarily for private or domestic purposes in association with dwelling B for the same period. The portion of the capital gain to be disregarded is:

$$\frac{181 \text{ days}}{791 \text{ days}} \times 120,000 = \$27,459.$$

Dwelling B

18. The cost of dwelling B is \$70,000 (land) and \$150,000 (building). Ignoring other costs and indexation, when CGT event A1 happens, John makes a capital gain of:

$$\$350,000 \text{ less } \$220,000 = \$130,000.$$

19. John's ownership period for dwelling B commences on 1 May 1996 when the land was acquired. John applies section 118-150 and chooses to treat dwelling B as his main residence from 1 May 1996, which is the date that he acquired the ownership interest in the land.

20. As dwelling B is John's main residence during the whole period of ownership, he may disregard the whole of the capital gain.

Example 2

21. If in Example 1, John had purchased the land on 1 May 1992, the result is as follows:

Dwelling A

22. John chooses to treat dwelling B as his main residence under section 118-150 from 1 May 1994. Therefore, dwelling A is John's main residence for the period 1 May 1992 to 1 May 1994 and also for the 6 month period from 1 January 1998 to 1 July 1998. The whole of the land is used primarily for private or domestic purposes in association with dwelling A for that period and the main residence exemption applies.

Dwelling B

23. John chooses to treat dwelling B as his main residence from 1 May 1992, being 4 years before the dwelling becomes his main residence. The ownership period for dwelling B commences on 1 May 1992 when the land was acquired. Therefore, John is only able to disregard the following portion of the capital gain:

$$\frac{1826 \text{ days}}{2556 \text{ days}} \times 130,000 = \$92,872.$$

Your comments

24. 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 97/3; TD 1999/D97; TD 1999/D100

Subject references:

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

Legislative references:

ITAA 1936 160ZZQ(3)(a)(i); ITAA 1936 160ZZQ(3)(a)(ii); ITAA 1936 160ZZQ(5); ITAA 1936 160ZZQ(5)(b)(i); ITAA 1936 160ZZQ(5A)
ITAA 1997 104-10; ITAA 1997 118-115(1)(c); ITAA 1997 118-120; ITAA 1997 118-120(1); ITAA 1997 118-140; ITAA 1997 118-150; ITAA 1997 118-150(2); ITAA 1997 118-150(4)(b); ITAA 1997 118-150(5); ITAA 1997 118-185

Case references:

ATO references:

NO 99/16030-6

BO CGT main residence summit 1999

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