


TD 94/D99 - Income tax: capital gains: if an election made for the purposes of subsection 160ZZQ(11) of the Income Tax Assessment Act 1936 covers more than one period of absence, is the six year period referred to in subparagraph 160ZZQ(11)(d)(iii) available in relation to each period of absence?

 This cover sheet is provided for information only. It does not form part of *TD 94/D99 - Income tax: capital gains: if an election made for the purposes of subsection 160ZZQ(11) of the Income Tax Assessment Act 1936 covers more than one period of absence, is the six year period referred to in subparagraph 160ZZQ(11)(d)(iii) available in relation to each period of absence?*

This document has been finalised by TD 95/9.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: capital gains: if an election made for the purposes of subsection 160ZZQ(11) of the *Income Tax Assessment Act 1936* covers more than one period of absence, is the six year period referred to in subparagraph 160ZZQ(11)(d)(iii) available in relation to *each* period of absence?

1. Yes. The six year period is measured in relation to a 'cessation time' (sub-subparagraph 160ZZQ(11)(d)(iii)(A)). If a dwelling ceases to be a taxpayer's sole or principal residence (SPR) more than once during the period of ownership of the SPR, the maximum six year period of income producing use can apply in relation to **each** period of absence. It is not the case that all periods of income-producing use are aggregated to calculate the six year period.

2. If there are intermittent periods of income producing use during an absence, these periods are aggregated in calculating the six year period (subparagraph 160ZZQ(11)(d)(iii)).

Example 1

Gary works for Foreign Affairs and is posted overseas for a period of 4 years. While he is overseas, his post-CGT SPR is rented. On return to Australia, Gary resumes residence in the dwelling for a further period of 4 years. He is posted overseas for another period of 4 years. The residence is rented again during this absence. On return, Gary sells the residence and elects for the purposes of subsection 160ZZQ(11) for two periods of income-producing use totalling 8 years.

Subsection 160ZZQ(11) treats the dwelling as Gary's SPR during the two periods of absence even though the total period of income producing use exceeded 6 years.

Example 2

Peta ceases to use a dwelling (acquired post CGT) as her SPR and rents it out for five years. She leaves it vacant for one year, rents it out for a further three years, then sells the dwelling.

As there has only been one 'cessation' of use of the property as an SPR, Peta can elect under subsection 160ZZQ(11A) only for the period that ends when the property has been used to produce income for 6 years. The exemption covers the first five years of rental use, the period the dwelling was vacant, and a further one year of rental use. For the remaining two year period of its use, exemption is not available.

Commissioner of Taxation

15/9/94

FOI INDEX DETAIL: Reference No.

Related Determinations: TD 94/D98

Subject Ref: elections; period of absence; principal residence exemption; use for income producing purposes

Legislative Ref: ITAA 160ZZQ(11); ITAA 160ZZQ(11)(d)(iii); ITAA 160ZZQ(11)(d)(iii)(A); ITAA 160ZZQ(11A)

ATO Ref: CGT Cell PRE (CGTDET11)

ISSN 1038 - 8982