

TD 98/D14 - Income tax: capital gains: does section 118-140 of the Income Tax Assessment Act 1997 (about changing main residences) allow you to treat two dwellings as your main residence for a period of up to six months if you choose to apply: (a) section 118-145 (about absences from your main residence); or (b) section 118-150 (about building, repairing or renovating a dwelling)?

 This cover sheet is provided for information only. It does not form part of *TD 98/D14 - Income tax: capital gains: does section 118-140 of the Income Tax Assessment Act 1997 (about changing main residences) allow you to treat two dwellings as your main residence for a period of up to six months if you choose to apply: (a) section 118-145 (about absences from your main residence); or (b) section 118-150 (about building, repairing or renovating a dwelling)?*

This document has been finalised by TD 1999/43.

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: does section 118-140 of the *Income Tax Assessment Act 1997* (about changing main residences) allow you to treat two dwellings as your main residence for a period of up to six months if you choose to apply:

- (a) section 118-145 (about absences from your main residence); or**
- (b) section 118-150 (about building, repairing or renovating a dwelling)?**

1. Yes. If the requirements of section 118-140 of the *Income Tax Assessment Act 1997* ('the 1997 Act') are satisfied, you can treat two dwellings as your main residence for a period of up to 6 months while you move from one dwelling to another.

2. Section 118-140 can apply in conjunction with either section 118-145 or section 118-150.

3. Section 118-145 allows you to choose a dwelling to continue to be treated as your main residence even if it ceases to be your main residence. Section 118-150 allows you to choose a dwelling to be treated as your main residence if you have an ownership interest (other than a life interest) in land, and you build, repair or renovate a dwelling on this land.

4. If you choose to apply section 118-145 or section 118-150, no other dwelling can be treated as your main residence during the period of absence (section 118-145) or during the period of building, repairing or renovating (section 118-150) unless section 118-140 also applies.

Example 1

5. *Anne acquired a dwelling on 1 January 1986 that was her existing main residence until she acquired a second dwelling on 1 March 1998. She moved into the second dwelling on 1 March 1998 but did not dispose of the first dwelling until 1 August 1998.*

6. *In accordance with section 118-145, Anne chooses to treat the first dwelling as her main residence for the entire period of ownership. Any gain on disposal of the first dwelling is disregarded for capital gains tax purposes.*

7. *In addition, section 118-140 allows her second dwelling to be treated as her main residence for the five month period from 1 March 1998 to 1 August 1998, provided Anne meets the*

conditions of section 118-140. This is because she is able to treat both dwellings as her main residence for up to six months, ending when she ceased to have an ownership interest in the first dwelling.

8. If Anne had used her first dwelling to produce income after she moved to her second dwelling, section 118-140 would not allow both dwellings to be treated as her main residence for this five month period. This is because the conditions of section 118-140 would not be met.

Example 2

9. David acquired his first dwelling on 1 July 1987. Before he disposed of it on 1 December 1998, he acquired a vacant block of land on 1 March 1994 on which he erected a new dwelling. The dwelling was completed on 31 October 1998. He moved in on 30 November 1998 (which was as soon as was practicable to do so) and continues to live there. In accordance with section 118-150, David chose to treat the new dwelling as his main residence for the period 1 February 1995 to 1 December 1998.

10. David can treat his first dwelling as his main residence from 1 July 1987 to 31 January 1995. As David owned two dwellings at the same time, he can also choose to apply both section 118-150 and section 118-140. As a result of this choice, David can treat both dwellings as his main residence for the six month period from 1 June 1998 to 1 December 1998. However, he cannot treat his first dwelling as his main residence for the period 1 February 1995 to 31 May 1998.

Note 1

11. There is a time limit during which the choice in section 118-150 can operate. This limit is the shorter of 4 years before the new dwelling becomes your main residence or the period starting when you acquire your ownership interest in the land and ending when the dwelling becomes your main residence.

Note 2

12. This Taxation Determination rewrites and replaces Taxation Determinations TD 96/20 and TD 53. Those Taxation Determinations, about subsections 160ZZQ(5), 160ZZQ(8) and 160ZZQ(11) of the *Income Tax Assessment Act 1936* ('the 1936 Act'), are being brought into line in this Determination with sections 118-150, 118-140 and 118-145. The Parliament is progressively amending the 1936 Act to restructure, renumber and rewrite the income tax law in plain language.

13. Several minor changes to the law are included in sections 118-140, 118-145 and 118-150. Firstly, the period for which two dwellings can be treated as your main residence has been extended from three months to six months. Secondly, the four year period for which you can claim the main residence exemption during the building, repairing or renovating of a dwelling (provided other conditions of section 118-150 are satisfied) now includes the period from completion of the dwelling to when the residence becomes your main residence. Under the 1936 Act the four year limit did not always cover from when the building was completed until it was occupied. Thirdly, there is no requirement for you to lodge an election under section 118-145 or section 118-150. Instead, you may choose to apply either section under the standard rule in section 103-25 for the making of choices.

14. Apart from changes made to reflect the 1997 Act, there are no material changes in this Determination from the views expressed in TD 96/20 and TD 53.

Date of effect

15. This Determination applies in working out whether you have a capital gain or loss from a CGT event that happens in relation to a dwelling in the 1998-99 income year or any later income year. Note that TD 53 and TD 96/20 will be withdrawn on finalisation of this draft Determination. These Determinations apply, even after their withdrawal, to disposals of dwellings up to and including the 1997-98 income year.

Your comments

16. If you wish to comment on this draft Determination, please send your comments by 2 October 1998 to:

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Note that, due to the short comment period, comments by mail are not being accepted.

Commissioner of Taxation

16 September 1998

FOI INDEX DETAIL: [Reference No.](#)

[Related Determinations](#): TD 53; TD 96/20

[Related Rulings](#):

[Subject Ref](#): absences; capital gains; capital gains tax; CGT exemptions; choices; dwelling; main residence; principal residence

[Legislative Ref](#): ITAA36 160ZZQ(5); ITAA36 160ZZQ(8); ITAA36 160ZZQ(11);
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