



IT 2485 - Income tax : capital gains : jointly owned property : not the principal residence of all joint owners

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 This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING NO. IT 2485

INCOME TAX : CAPITAL GAINS : JOINTLY OWNED PROPERTY :
NOT THE PRINCIPAL RESIDENCE OF ALL JOINT OWNERS

F.O.I. EMBARGO : May be released

REF N.O. REF : 86/9818-0 DATE OF EFFECT : Immediate
 B.O. REF :

F.O.I. INDEX DETAIL

REFERENCE NO.	SUBJECT REFS :	LEGISLAT REFS :
	CAPITAL GAINS	160ZZQ
I 1103481	- JOINTLY OWNED PRINCIPAL RESIDENCE	

PREAMBLE Division 18 of Part IIIA of the Income Tax Assessment Act 1936 allows an exemption from capital gains tax for the gain arising from the disposal of a dwelling acquired after 19 September 1985 having regard to the period that the dwelling was the taxpayer's sole or principal residence while it was owned by the taxpayer. A loss incurred on the disposal of such a dwelling is also excluded on the same basis from being allowable as a capital loss.

2. In particular, subsection 160ZZQ(12) operates so that no capital gain is deemed to have accrued to a taxpayer in respect of the disposal of a dwelling owned by the taxpayer, where throughout a defined period, the dwelling was the taxpayer's sole or principal residence.

3. Advice has been sought on whether the reference to "owned" in subsection 160ZZQ(12) includes partial ownership, and if so :

- (a) whether the exclusion from the operation of Part IIIA afforded by subsection 160ZZQ(12) extends to the capital gain or capital loss on the disposal of a dwelling that is jointly owned by a taxpayer with another person to whom the taxpayer is not legally married and only the taxpayer has nominated the dwelling as the principal residence;
- (b) whether the exclusion applies to the whole of the capital gain or loss arising on disposal of the dwelling or only on that part of it that relates to the interest of the joint owner who has nominated the dwelling as the principal residence.

RULING 4. Subsection 160ZZQ(2) sets out the circumstances in which a person will be taken to own a dwelling, including a flat or home unit. Paragraph 160ZN(1)(a), in turn, provides that where an asset is owned by persons as joint tenants, Part IIIA applies as if those persons owned the asset as tenants in common in equal shares. Therefore, a person who is a joint owner of a dwelling referred to in subsection 160ZZQ(2) is an owner of the dwelling for the purposes of subsection 160ZZQ(12).

5. Where the dwelling referred to in subsection 160ZZQ(2) is not the sole or principal residence of all joint owners, and subsections 160ZZQ(9) and (10) have no application, the exemption provided by subsection 160ZZQ(12) on disposal of the asset is available only to the joint owner or each joint owner who occupied the dwelling as his or her sole or principal residence in respect of his or her share in the dwelling.

6. Any other joint owner will be subject to the provisions of Part IIIA in respect of his or her share as though the property was not a sole or principal residence of any party.

COMMISSIONER OF TAXATION

14 July 1988