




TD 1999/73 - Income tax: capital gains: is land under a unit of accommodation subject to the main residence exemption under Subdivision 118-B in Part 3-1 of the Income Tax Assessment Act 1997 if the taxpayer sells the unit of accommodation separately from the land?

 This cover sheet is provided for information only. It does not form part of *TD 1999/73 - Income tax: capital gains: is land under a unit of accommodation subject to the main residence exemption under Subdivision 118-B in Part 3-1 of the Income Tax Assessment Act 1997 if the taxpayer sells the unit of accommodation separately from the land?*

 This Ruling has been reviewed as part of a project to review public rulings. The ATO view expressed in this Ruling is current as of 8 January 2018.

Taxation Determination

Income tax: capital gains: is land under a unit of accommodation subject to the main residence exemption under Subdivision 118-B in Part 3-1 of the *Income Tax Assessment Act 1997* if the taxpayer sells the unit of accommodation separately from the land?

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Preamble

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

This determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. No. The land does not qualify for the main residence exemption.
2. Paragraph (c) of the definition of 'dwelling' in subsection 118-115(1) brings within the definition 'any land immediately under the unit of accommodation'. It only does so, however, while the land remains immediately under the unit of accommodation.
3. If a unit of accommodation is removed from land and the land is then sold, the land does not come within paragraph (c) of the definition of 'dwelling' in subsection 118-115(1). This applies to land under all types of units of accommodation.
4. Land under a unit of accommodation qualifies for the main residence exemption only if the land and the unit of accommodation are sold together as a dwelling.

Commissioner of Taxation

15 December 1999

Previous draft:

Previously issued as TD 1999/D43

Related Rulings/Determinations:

Subject references:

accommodation; capital gains; CGT exemptions; dwelling; land; main residence; unit of accommodation

Legislative references:

ITAA 1997 Subdivision 118-B; ITAA 1997 118-115(1)(c)

Case references:

ATO references:

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