

TD 92/129 - Income tax: capital gains: if a person builds a principal residence straddling two post-CGT blocks acquired at different times, what is the 'relevant commencing date' for the purpose of subsection 160ZZQ(5AA) of the Income Tax Assessment Act (1936) ?

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

! This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: capital gains: if a person builds a principal residence straddling two post-CGT blocks acquired at different times, what is the 'relevant commencing date' for the purpose of subsection 160ZZQ(5AA) of the *Income Tax Assessment Act (1936)*?

1. The 'relevant commencing date' is the date the earlier block was acquired.

Example:

Block A was purchased 1 October 1985. Block B, the neighbouring block, was purchased 1 October 1990. On 1 January 1991 construction commenced on a dwelling which straddled both blocks. On 1 July 1991, the taxpayer moved into this dwelling as his or her sole or principal residence, and continued to reside there until 1 December 1991 when the dwelling was disposed of. At no time was the dwelling used for income-producing purposes.

If the taxpayer elects for subsection 160ZZQ(5) to apply, the 'relevant commencing date' for subsection 160ZZQ(5AA) is 1 October 1985. As the period from this date until the dwelling was completed is more than four years before the dwelling became the sole or principal residence, sub-subparagraph 160ZZQ(5)(e)(i)(B) applies to treat the dwelling as the taxpayer's sole or principal residence only from 1 July 1987 until 30 June 1991.

Note: *As the 'relevant period' (subsection 160ZZQ(1)) also commenced on 1 October 1985, the taxpayer is not entitled to a full principal residence exemption. The full period of ownership (1 October 1985 - 1 December 1991) is a period of 2,253 days. The dwelling was the taxpayer's sole or principal place of residence from 1 July 1987 - 30 June 1991 [deemed] and from 1 July 1991 - 1 December 1991 [actual] (a total of 1,615 days). The dwelling was not the taxpayer's sole or principal residence for 638 (2,253 - 1,615) days. In accordance with subsection 160ZZQ(16), approximately 28 per cent (638/2,253) of any capital gain or loss on disposal of the dwelling would not be exempt.*

Commissioner of Taxation

23/07/92