

TD 92/134 - Income tax: capital gains : how is a capital gain or loss determined if a dwelling has been occupied as a sole or principal residence for part only of the period of ownership?

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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 This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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 4VAAA 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 : how is a capital gain or loss determined if a dwelling has been occupied as a sole or principal residence for part only of the period of ownership?

1. Subsection 160ZZQ(16) of the *Income Tax Assessment Act 1936* details the formula to be used in calculating a capital gain or loss if a dwelling is the principal residence of a taxpayer during part only of the period of ownership.

2. A capital gain or loss is determined by reference to that part of the whole of the period of ownership of the dwelling during which the dwelling was not the taxpayer's sole or principal residence. It is not determined according to any increase or decrease in value of the dwelling during the period it was not the taxpayer's sole or principal residence.

Example:

A taxpayer acquires a dwelling for \$100,000 and initially rents the dwelling for a period of 600 days. The dwelling then becomes the taxpayer's sole or principal residence for a period of 300 days. The dwelling is then sold for \$220,000. When the taxpayer moved into the dwelling, its market value was \$150,000.

The capital gain is not limited to \$50,000 i.e. the difference between the market value of the dwelling when residence was established and its original cost (disregarding indexation and incidental costs). Based on the statutory formula, the capital gain is calculated as follows:

$$\frac{(\$220,000 - \$100,000) \times 600 \text{ days}}{900 \text{ days}} = \$80,000$$

Note: *Subsection 160ZZQ(11) does not apply in this example as there is no initial period of residence. If the taxpayer had established residence in the property before renting it, subsection 160ZZQ(11) may provide an exemption.*

Commissioner of Taxation

30/07/92

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