TD 92/147A - Addendum - Income tax: capital gains: how soon after erection must a dwelling become the sole or principal residence of a taxpayer to satisfy the conditions in subsection 160ZZQ(5)?

⚠️ This cover sheet is provided for information only. It does not form part of *TD 92/147A - Addendum - Income tax: capital gains: how soon after erection must a dwelling become the sole or principal residence of a taxpayer to satisfy the conditions in subsection 160ZZQ(5)?*

⚠️ View the <u>consolidated version</u> for this notice.

Addendum

Taxation Determination

Income tax: capital gains: how soon after erection must a dwelling become the sole or principal residence of a taxpayer to satisfy the conditions in subsection 160ZZQ(5)?

This Addendum amends Taxation Determination TD 92/147 to reflect the rewritten capital gains tax provisions in Part 3-1 of the *Income Tax Assessment Act 1997*.

TD 92/147 is amended as follows:

1.   Title

Omit the title; substitute:

> Income tax: capital gains: how soon after the construction of a dwelling is finished must the dwelling become the main residence of a taxpayer to satisfy the conditions in paragraph 118-150(3)(a) of the *Income Tax Assessment Act 1997*?

2.   Paragraph 1

Omit the paragraph; substitute:

> 1.   One of the conditions for making a choice under subsection 118-150(2) of the *Income Tax Assessment Act 1997* (ITAA 1997)[1] is that the dwelling must become the main residence of a taxpayer as soon as practicable after the construction of the dwelling is finished (see paragraph 118-150(3)(a)).

3.   Paragraph 2

Omit 'a dwelling is erected or completed'; substitute 'the construction of a dwelling is finished'.

---
[1] All subsequent legislative references in this Determination are to the ITAA 1997 unless indicated otherwise.

4. Paragraph 3

(a)   Omit 'sole or principal'; substitute 'main'.

(b)   Omit 'erection or completion'; substitute 'the construction of the dwelling is finished'.

5. Example 1

(a)   Number the paragraphs as 4 and 5.

(b)   Omit 'sole or principal' substitute 'main'.

(c)   Omit '1991 '.

(d)   Omit 'its erection or completion'; substitute 'the construction of the dwelling is finished'.

6. Example 2

Omit the paragraphs; substitute:

> 6.   *The construction of Tom's dwelling is due to finish on 1 June. On 1 May, Tom decides to travel overseas for a period of 6 months. He leaves on 15 May. Although the construction of the dwelling is finished on 1 June, Tom does not move into the dwelling until his return to Australia in November.*

> 7.   *In these circumstances, a choice that section 118-150 apply to the dwelling cannot be made as the dwelling has not become Tom's main residence as soon as practicable after the construction of the dwelling is finished.*

7. Example 3

Omit the paragraphs; substitute:

> 8.   *The construction of Mary's dwelling is due to finish on 1 March. On 11 February, Mary is directed by her employer to go overseas on an assignment for 4 months, leaving on 25 February. The construction of Mary's dwelling is finished on 1 March. Mary moves into the dwelling on her return to Australia in mid June.*

> 9.   *As she is required by her employer to go overseas, Mary is taken to have moved into the dwelling as soon as practicable after the construction of the dwelling is finished.*

8. Subject references

Omit the references; insert:

> CGT exemption, CGT main residence exemption

9. Legislative references

Omit the reference; insert:

> ITAA 1997; ITAA 1997 118-150; ITAA 1997 118-150(2); ITAA 1997 118-150(3)(a)

This Addendum applies from 14 September 2006, the date of effect of the repeal of the former capital gains tax provisions in Part IIIA of the *Income Tax Assessment Act 1936* by *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.

Commissioner of Taxation
12 May 2010