

***TD 92/158 - Income tax: capital gains: can the following comprise a 'dwelling' and therefore be eligible for exemption as a sole or principal residence (i) a structure built underground? (ii) a yacht? (iii) a tent?***

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! This document has changed over time. This is a consolidated version of the ruling which was published on *17 September 1992*

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.

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## Taxation Determination

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**Income tax : capital gains: can the following comprise a 'dwelling' and therefore be eligible for exemption as a sole or principal residence:**

- (i) a structure built underground?**
- (ii) a yacht?**
- (iii) a tent?**

1. A 'dwelling' comprises a unit of residential accommodation contained in a building. It also extends to include caravans, houseboats or other mobile homes (subsection 160ZZQ(1) of the *Income Tax Assessment Act 1936*).

### A STRUCTURE BUILT UNDERGROUND

2. A structure built underground (e.g. an underground home at Coober Pedy) would constitute a 'dwelling'. There is no requirement that a residential building be constructed above the ground to qualify for exemption.

### A YACHT

3. A yacht may, under certain circumstances, constitute a mobile home or houseboat and therefore, a 'dwelling' for exemption purposes. Provided that the level of facilities is such as to make the yacht habitable, the yacht will be accepted as a 'dwelling'.

### A TENT

4. In most circumstances, a tent will not be regarded as a substantial structure within the scope envisaged by the definition of 'dwelling' in subsection 160ZZQ(1). As the definition connotes a substantial permanent structure, a tent would usually not satisfy this requirement.

**Note:** Whether a dwelling is a person's sole or principal residence is a question of fact (CGT Determination TD 51).

**Commissioner of Taxation**

17/09/92

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