



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

 This cover sheet is provided for information only. It does not form part of *TD 92/158 - Income tax: capital gains: can the following comprise a 'dwelling' and therefore be eligible for exemption as a main residence (i) a structure built underground? (ii) a yacht? (iii) a tent?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *21 April 2010*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Taxation Determination

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

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

1. The meaning of 'dwelling' is defined in section 118-115 of the *Income Tax Assessment Act 1997* (ITAA 1997). A 'dwelling' includes:

- a unit of accommodation that is a building or is contained in a building and consists wholly or mainly of residential accommodation; and
- a unit of accommodation that is a caravan, houseboat or other mobile home; and
- any land immediately under the unit of accommodation.

However, except as provided in section 118-120 of the ITAA 1997, a dwelling does not include any land adjacent to a building.

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 section 118-115 of the ITAA 1997. As the definition connotes a substantial permanent structure, a tent would usually not satisfy this requirement.

Note: Whether a dwelling is a person's main residence is a question of fact.

FOI INDEX DETAIL: Reference No. I 1213291

Previously Draft TD 92/D109

Related Determinations:

Subject Ref: dwelling; main residence exemption

Legislative Ref: ITAA 1997 118-115; ITAA 1997 118-120

ATO Ref: CGT Cell PRE

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