



# ***TD 92/172 - Income tax: capital gains: do the dwellings referred to in subsection 160ZZQ(9) have to be post-CGT assets?***

 This cover sheet is provided for information only. It does not form part of *TD 92/172 - Income tax: capital gains: do the dwellings referred to in subsection 160ZZQ(9) have to be post-CGT assets?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *22 October 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: do the dwellings referred to in subsection 160ZZQ(9) have to be post-CGT assets?

1. No. Subsection 160ZZQ(9) does not require that the dwellings be post-CGT assets. The subsection merely requires that each spouse has a separate dwelling which is his or her sole or principal residence.

*Example:*

*A husband and wife jointly own both a pre-CGT house (occupied by the wife) and a post-CGT house (occupied by the husband). The wife can nominate her interest in the post-CGT house as her sole or principal residence under subsection 160ZZQ(9).*

*Assuming the husband nominates his interest in the post-CGT house as his sole or principal residence, full exemption will be available under subsection 160ZZQ(12).*

*Note: In this case, the spouses are not living separately and apart on a permanent basis (subsection 160K(2)).*

**Commissioner of Taxation**

22/10/92