

TD 92/172 - Income tax: capital gains: do the dwellings referred to in subsection 118-170(1) of the Income Tax Assessment Act 1997 have to be post-CGT assets?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *17 March 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: do the dwellings referred to in subsection 118-170(1) of the *Income Tax Assessment Act 1997* have to be post-CGT assets?

1. No. Subsection 118-170(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)¹ 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 main residence.

Example

2. 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 husband and wife can choose the post-CGT house as their main residence under paragraph 118-170(1)(a).

3. **Note:** in this case, the spouses are not living separately and apart on a permanent basis (subsection 118-170(1)).

Commissioner of Taxation

22/10/92

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Previously Draft TD 92/D149

Related Determinations: TD92/174

Subject Ref: CGT main residence exemption; interests in dwelling

Legislative Ref: ITAA 1997 118-170(1); ITAA 1997 118-170(1)(a)

ATO Ref: CGT Cell PRE

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¹ All legislative references are to the ITAA 1997 unless indicated otherwise.