


# ***TD 92/172A1 - Addendum - Income tax: capital gains: do the dwellings referred to in subsection 160ZZQ(9) have to be post-CGT assets?***

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# Addendum

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## Taxation Determination

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

This Addendum amends Taxation Determination TD 92/172 to reflect the rewritten capital gains tax provisions in Part 3-1 of the *Income Tax Assessment Act 1997*.

### TD 92/172 is amended as follows:

#### 1. Title

Omit the title; substitute:

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?

#### 2. Paragraph 1

- (a) Omit 'Subsection 160ZZQ(9)'; substitute 'Subsection 118-170(1) of the *Income Tax Assessment Act 1997* (ITAA 1997)<sup>1</sup>'.
- (b) Omit 'sole or principal'; substitute 'main'.

#### 3. Example

Omit the example (including heading); substitute:

**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)).

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<sup>1</sup> All legislative references are to the ITAA 1997 unless indicated otherwise.

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## 4. Related Determinations

Omit 'TD92/173; '.

## 5. Subject References

Omit 'Principal residence exemption'; substitute 'CGT main residence exemption'.

## 6. Legislative References

Omit the legislative references; substitute:

ITAA 1997 118-170(1); ITAA 1997 118-170(1)(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 the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.

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**Commissioner of Taxation**

17 March 2010

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ATO references

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