TD 92/173 - Income tax: capital gains: does subsection 160ZZQ(9) require each spouse to have an interest in each dwelling referred to?

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

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

Taxation Determination

Income tax : capital gains : does subsection 160ZZQ(9) require each spouse to have an interest in each dwelling referred to?

1. No. A person may nominate, as a sole or principal residence, his or her spouse's dwelling even though that person has no interest in the spouse's dwelling.

2. There is nothing to prevent either spouse nominating the other's dwelling as a sole or principal residence so that a full exemption is obtained on the disposal of that dwelling.

3. The extended meaning of ownership of a 'dwelling' in subsection 160ZZQ(2) results in subsection 160ZZQ(9) not being limited to circumstances where a person has a legal or equitable estate or interest in land. A person with a right to occupy a house e.g. a residential tenant or mere licensee, has a 'dwelling' for the purposes of subsection 160ZZQ(9). A nomination should therefore be made if the role or principal residence of either spouse is, for example, rented from a third person.

Example:

A husband and wife each separately owns and occupies different post-CGT homes.

If the husband's home is likely to yield a larger capital gain on disposal, the wife may nominate her husband's dwelling so that subsection 160ZZQ(10) cannot apply to reduce his exemption by one-half. In these circumstances, there is no exemption in respect of the wife's dwelling.

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

FOI INDEX DETAIL: Reference No. I 1213475 Previously Draft TD 92/D150
Related Determinations: TD92/172; TD92/174
Subject Ref: Principal residence exemption; interests in dwelling
Legislative Ref: ITAA 160ZZQ(2); ITAA 160ZZQ(9); ITAA160ZZQ(10); ITAA160K(2).
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