



TD 92/174 - Income tax: capital gains: how does subsection 118-170(1) of the Income Tax Assessment Act 1997 interact with section 118-145 of that Act?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *10 March 2010*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA 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: how does subsection 118-170(1) of the *Income Tax Assessment Act 1997* interact with section 118-145 of that Act?

1. A dwelling chosen or nominated under subsection 118-170(1) of the ITAA 1997¹ may be one which is deemed to be a person's main residence because of section 118-145.

Example

2. A husband and wife own a pre-CGT house which they both occupy. Due to a change in employment, the husband moves to another town and they acquire another (post-CGT) house on 1 July 2000. The husband occupies this house for 2 years during the course of his employment contract. On 1 July 2002, he returns to the pre-CGT house which he then continues to occupy with his wife. The post-CGT house is sold within six years of the husband ceasing to occupy it.

3. To obtain a full main residence exemption on disposal of the post-CGT house, the husband must make a choice under section 118-145 to treat that house as his main residence for the period 1 July 2002 until disposal. The husband and wife can then choose to treat the post-CGT house as their main residence under paragraph 118-170(1)(a) for the entire period that they owned it.

4. If the husband does not make the choice under section 118-145, neither would be entitled to an exemption for the period after the husband ceased to occupy the post-CGT house.

Commissioner of Taxation
22/10/92

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Legislative Ref: ITAA 1997; ITAA 1997 118-170(1); ITAA 1997 118-170(1)(a); ITAA 1997 118-145

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