


TD 92/174A1 - Addendum - Income tax: capital gains: how does subsection 160ZZQ(9) interact with subsection 160ZZQ(11)?

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Addendum

Taxation Determination

Income tax: capital gains: how does
subsection 160ZZQ(9) interact with
subsection 160ZZQ(11)?

This Addendum amends Taxation Determination TD 92/174 to reflect the rewritten capital gains tax provisions in Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*.

TD 92/174 is amended as follows:

1. Title

Omit the title; substitute:

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?

2. Paragraph 1

- (a) Insert 'chosen or' after 'dwelling'.
- (b) Omit 'subsection 160ZZQ(9)'; substitute 'subsection 118-170(1) of the ITAA 1997¹'.
- (c) Omit 'sole or principal'; substitute 'main'.
- (d) Omit 'subsection 160ZZQ(11)'; substitute 'section 118-145'.

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

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3. Example

Omit the example; substitute:

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.*

4. Subject References

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

5. Legislative References

Omit the legislative references; substitute:

ITAA 1997; ITAA 1997 118-170(1); ITAA 1997 118-170(1)(a); ITAA 1997 118-145

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 *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.

Commissioner of Taxation

10 March 2010

ATO references

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ATOLaw topic: Income Tax ~~ Capital Gains Tax ~~ main residence exemption