


***TD 95/7A - Addendum - Income tax: capital gains: does subsection 160M(12) of the Income Tax Assessment Act 1936 prevent a taxpayer from making an election under subsection 160ZZQ(11A) for a sole or principal residence (SPR) that the taxpayer owned before becoming a resident of Australia?***

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## Addendum

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### Taxation Determination

Income tax: capital gains: does subsection 160M(12) of the *Income Tax Assessment Act 1936* prevent a taxpayer from making an election under subsection 160ZZQ(11A) for a sole or principal residence (SPR) that the taxpayer owned before becoming a resident of Australia?

This Addendum amends Taxation Determination TD 95/7 to reflect the rewritten capital gains tax provisions in Part 3-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) and changes to the law effected by *Tax Laws Amendment (2006 Measures No. 4) Act 2006*.

#### TD 95/7 is amended as follows:

**1. Title**

Omit the title; substitute:

Income tax: capital gains: does subsection 855-45(3) of the *Income Tax Assessment Act 1997* prevent a taxpayer from making a choice that section 118-145 of that Act apply to an overseas dwelling that the taxpayer owned before becoming a resident of Australia?

**2. Paragraph 1**

Omit the paragraph; substitute:

1. No. A taxpayer can, in relation to an overseas dwelling that has ceased to be his or her main residence before becoming a resident of Australia, make a choice that section 118-145 of the *Income Tax Assessment Act 1997* (ITAA 1997)<sup>1</sup> apply to treat the dwelling as having continued to be their main residence in their absence, subject to the other requirements of that provision being satisfied.

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

# TD 95/7

## 3. Paragraph 2

- (a) Omit 'subsection 160M(12)'; substitute 'subsection 855-45(3)'.
- (b) Omit 'SPR'; substitute 'main residence'.
- (c) Omit 'paragraph 160ZZQ(11)(a)'; substitute 'section 118-145'.
- (d) Insert after paragraph:

**Note:** section 855-45 does not apply if, immediately after you become an Australian resident, you are a temporary resident as defined in section 995-1 (see section 768-950).

## 4. Example

- (a) Omit from the first paragraph 'March 1991'; substitute 'July 2007'.
- (b) Omit from the first paragraph 'SPR'; substitute 'dwelling'.
- (c) Omit from the second paragraph '1993'; substitute '2008'.
- (d) Omit the third paragraph; substitute:

*In preparing her 2007-08 income tax return, Sarah made a choice that section 118-145 apply for the period she was absent from her UK dwelling. The effect of making the choice is that the capital gain or loss made from the sale of her UK property is disregarded in calculating Sarah's net capital gain or loss for the year.*

## 5. Subject references

Omit all references; substitute 'CGT exemption; CGT main residence exemption; Absence choice'.

## 6. Legislative references

Omit all references; substitute 'ITAA 1997 118-145; ITAA 1997 768-950; ITAA 1997 855-45; ITAA 1997 855-45(3); ITAA 1997 995-1'.

This Addendum applies from 12 December 2006, the date on which section 855-45 of the ITAA 1997 commenced operation.

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**Commissioner of Taxation**

12 May 2010

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ATO references

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