



TD 95/8W - Income tax: capital gains: can a subsection 160ZZQ(11A) election made for the purposes of subsection 160ZZQ(11) of the Income Tax Assessment Act 1936 cover more than one period of absence from a taxpayer's sole or principal residence (SPR)?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *21 April 2010*



Notice of Withdrawal

Taxation Determination

Income tax: capital gains: can a subsection 160ZZQ(11A) election made for the purposes of subsection 160ZZQ(11) of the *Income Tax Assessment Act 1936* cover more than one period of absence from a taxpayer's sole or principal residence (SPR)?

Taxation Determination TD 95/8 is withdrawn with effect from today.

1. This Determination clarifies that an election made for the purposes of subsection 160ZZQ(11) of the *Income Tax Assessment Act 1936* can cover more than one period of absence from a taxpayer's residence. Subsection 160ZZQ(11) was rewritten as section 118-45 of the *Income Tax Assessment Act 1997* (ITAA 1997). In the rewritten provision, a taxpayer is required to make a 'choice' rather than an 'election'.
2. When the capital gains tax (CGT) provisions were rewritten, the law was amended to make it clear that the way in which an income tax return is prepared is sufficient evidence of the making of a choice for CGT purposes (section 103-25 of the ITAA 1997).
3. As a choice under section 118-145 of the ITAA 1997 is only required to be made by way of the preparation of the taxpayer's income tax return for the year in which they would otherwise make a capital gain or loss from their dwelling, it is clear that the choice can cover more than one period of absence. This is confirmed by the example which follows subsection 118-145(4).
4. Accordingly, this Determination is no longer considered necessary and is withdrawn.

Commissioner of Taxation

21 April 2010

ATO references

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