

TD 53 - Capital Gains: Can an election that subsection 160ZZQ(5) apply, be pro-rated for part of the 'construction period'?



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CGT Determination Number 53

Capital Gains: Can an election that subsection 160ZZQ(5) apply, be pro-rated for part of the "construction period" ?

Determination

1. No. The effect of subsection 160ZZQ(5) is that no other dwelling, other than the elected dwelling, will be treated as the sole or principal residence of the taxpayer during the "construction period".

2. An election precludes a taxpayer from obtaining an exemption in respect of any other sole or principal residence during the "construction period".

Note: As a general rule, the "construction period" is the shorter of either the period from which the taxpayer acquired the interest in the land to the date when the dwelling was completed, or 4 years prior to the dwelling becoming the sole or principal residence.

Example:

House A - acquired January 1987
- disposed February 1989

House B - vacant land acquired 1 July 1988
- construction of house on the land completed and occupied in July 1990

The taxpayer cannot utilise subsection 160ZZQ(5) from February 1989 and preserve the exemption in respect of House A. If an election is made, it will have the effect of denying the exemption in respect of house A from 1 July 1988. If the taxpayer wishes to preserve a full exemption in respect of House A no election should be lodged under subsection 160ZZQ(5) in respect of House B.

COMMISSIONER OF TAXATION

26 March 1992

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