


TD 1999/D37 - Income tax: capital gains: if your land (including land on which your dwelling is situated) exceeds 2 hectares, can you select which 2 hectares the main residence exemption in Subdivision 118-B applies to and, if so, how do you calculate any capital gain or capital loss you make on the remainder of your land?

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This document has been finalised by TD 1999/67.

Draft Taxation Determination

Income tax: capital gains: if your land (including land on which your dwelling is situated) exceeds 2 hectares, can you select which 2 hectares the main residence exemption in Subdivision 118-B applies to and, if so, how do you calculate any capital gain or capital loss you make on the remainder of your land?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the ATO.

1. Yes. You can apply the main residence exemption in Subdivision 118-B of the *Income Tax Assessment Act 1997* to whichever area of land you choose in addition to the land on which your dwelling is situated. However, subsection 118-120(2) specifies that the total of the land (including the land on which the dwelling is situated) must not exceed 2 hectares.
2. A capital gain or capital loss you make from the land is only disregarded under the main residence exemption if it is used primarily for private or domestic purposes in association with your dwelling.
3. If your selected area of land can be separately valued you calculate your capital gain or capital loss on the remainder of your land by apportioning the capital proceeds and the cost base or reduced cost base (if applicable) on the basis of the valuation. This is relevant if the value of the remainder of the land is of a greater or lesser value than your selected area of land.
4. If your selected area of land cannot be separately valued your capital gain or loss on the remainder of your land may be calculated by apportioning the capital proceeds and the cost base or reduced cost base (if applicable) on an area basis.
5. The amount of the capital gain or capital loss attributable to the remainder of your land must be reasonable in the circumstances.

Example 1

6. Fred owns a 10 hectare farming property and he uses 4 hectares primarily for private or domestic purposes in association with his dwelling. Fred sells the farm for \$500,000, which includes \$100,000 for the farmhouse. The cost base of the entire farm is \$300,000 including

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\$80,000 for the farmhouse. Therefore the cost base attributable to the 10 hectares of land (which includes the land on which the farmhouse is located) is \$220,000.

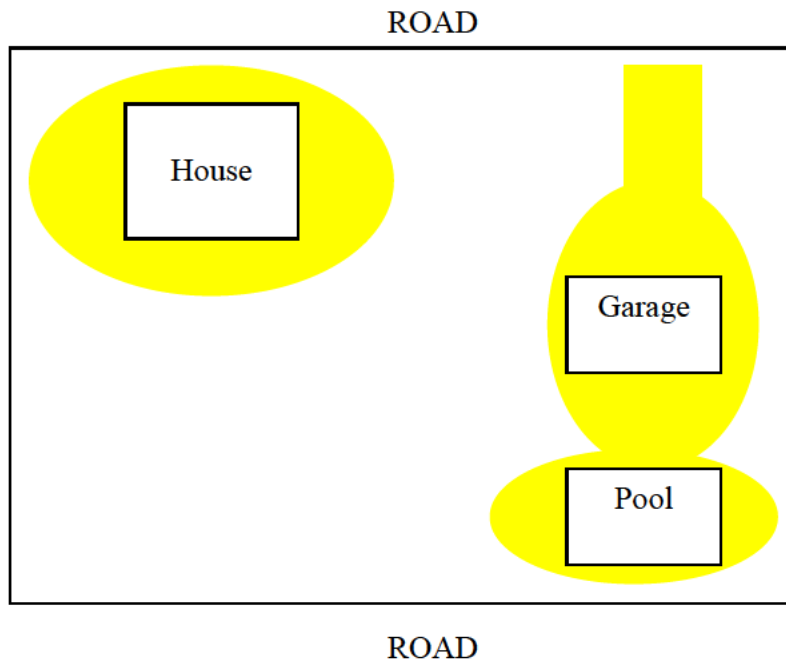
7. Fred's capital gain is \$200,000, being \$500,000 less \$300,000 (ignoring indexation). The cost base attributable to 2 hectares of the land is \$44,000, being two-tenths of the total cost base of the land. The capital proceeds attributable to 2 hectares of adjacent land are \$80,000 being two-tenths of the capital proceeds attributable to the land. Therefore the capital gain in respect of the 2 hectares is \$36,000, being \$80,000 less \$44,000.

8. The capital gain on the farmhouse is \$20,000, being \$100,000 less \$80,000.

9. Fred may disregard his capital gains of \$36,000 (for the 2 hectares of land) and of \$20,000 (for the farmhouse) under the main residence exemption provisions. Therefore, Fred includes in his assessable income a capital gain of \$144,000, being \$200,000 less \$56,000.

Example 2

10. Alistair owns a 10 hectare property - see the diagram below. He has selected the shaded area as the part of the land on which he wishes to claim the main residence exemption. This area does not exceed 2 hectares and is used primarily for private or domestic purposes in association with Alistair's dwelling. He sells the property for \$500,000. He obtains an opinion from an expert valuer that the value of the 2 hectares of land and the house is \$300,000. The cost base attributable to this part of the property (taking into account improvements since purchase) is \$180,000 and the remainder is \$120,000. The capital gain on the total property is \$200,000. Alistair disregards \$120,000 of the capital gain because it is attributable to his main residence.



Your comments

We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by Date: 25 August 1999
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Commissioner of Taxation

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Subject references:

Adjacent; adjacent land; capital gains; dwelling; exemption; dwelling; main residence; valuation

Legislative references:

ITAA 1997 Subdivision 118-B; ITAA 1997 118-120(2)

ATO references:

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