


TD 1999/D38 - Income tax: capital gains: is 'adjacent' land in terms of section 118-120 of the Income Tax Assessment Act 1997 limited to land contiguous to a dwelling?

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This document has been finalised by TD 1999/68.

Draft Taxation Determination

Income tax: capital gains: is 'adjacent' land in terms of section 118–120 of the *Income Tax Assessment Act 1997* limited to land contiguous to a dwelling?

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. No. Land does not have to be contiguous to (that is, touching or in contact with) the land on which a dwelling is situated to be 'adjacent' to the dwelling for the purposes of section 118–120.
2. 'Adjacent is not a word to which a precise and uniform meaning is attached by ordinary usage. It is not confined to places adjoining, and it includes places close to or near. What degree of proximity would justify the application of the word is entirely a question of circumstances ...' (*Mayor of Wellington v. Mayor of Lower Hutt* (1904) AC 773 at 775-776).
3. The *Macquarie Dictionary* defines 'adjacent' as 'lying near, close or contiguous; adjoining; neighbouring'.
4. For the purposes of section 118–120, land is adjacent to your dwelling if it is close to or near your dwelling.
5. The adjacent land must be used primarily for private or domestic purposes in association with your dwelling and the same CGT event must happen to the adjacent land and your dwelling for you to be entitled to the main residence exemption on the adjacent land. In addition, the total area of land (including the land on which your dwelling is situated) must not exceed 2 hectares.
6. The further the distance between the relevant land and the land on which your dwelling is situated the less likely it is that the relevant land is 'adjacent' land in terms of section 118–120. This is so not only because the word 'adjacent' has its limits but also because it is less likely that the land could be used primarily for private or domestic purposes in association with your dwelling.

Example 1

7. *Robert owns a 1.5 hectare property on which he has a house, swimming pool and tennis court. There is a public access laneway at the side of the house which separates the tennis court*

from the rest of the property. The land on which the tennis court is situated is considered to be adjacent land for the purposes of section 118–120.

Example 2

8. *Bob and Lyn own a house in a country town. Lyn owns a horse which she rides in local horse competitions. There is no room for the horse in the backyard of the house, so Bob and Lyn bought a block of land some two street blocks away on which to run the horse. The total area of the land on which the house is situated and the horse yard is less than 2 hectares. The horse yard, which is used by Lyn primarily for private or domestic purposes in association with her house, is considered to be adjacent land for the purposes of section 118–120.*

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

28 July 1999

Subject references:

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

Legislative references:

ITAA 1997 118-120

Case references:

Mayor of Wellington v. Mayor of Lower Hutt (1904) AC 773

ATO references:

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BO CGT main residence summit 1999

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