


***TD 1999/D99 - Income tax: capital gains: in what circumstances does subsection 118-150(5) of the Income Tax Assessment Act 1997 modify the start of the period in paragraph 118-150(4)(b) for which you choose under subsection 118-150(2) to apply the main residence exemption in Subdivision 118-B?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D99 - Income tax: capital gains: in what circumstances does subsection 118-150(5) of the Income Tax Assessment Act 1997 modify the start of the period in paragraph 118-150(4)(b) for which you choose under subsection 118-150(2) to apply the main residence exemption in Subdivision 118-B?*

This document has been finalised by TD 2000/16.



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## Draft Taxation Determination

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### **Income tax: capital gains: in what circumstances does subsection 118-150(5) of the *Income Tax Assessment Act 1997* modify the start of the period in paragraph 118-150(4)(b) for which you choose under subsection 118-150(2) to apply the main residence exemption in Subdivision 118-B?**

#### *Preamble*

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

1. The purpose of section 118-150 is to extend the main residence exemption in Subdivision 118-B of the *Income Tax Assessment Act 1997* (ITAA 1997) to land in which you have an ownership interest (other than a life interest) if you build, renovate or repair a dwelling on the land and that dwelling becomes your main residence.
2. If you build a dwelling on vacant land, you may choose under subsection 118-150(2) to apply the main residence exemption for the period from when you acquire your ownership interest in the land until the dwelling becomes your main residence. This period may not exceed four years before the dwelling becomes your main residence: subsection 118-150(4)). The dwelling must become your main residence as soon as practicable after work in building the dwelling is completed and must continue to be your main residence for at least 3 months: subsection 118-150(3).
3. If there is a dwelling or a partly completed dwelling on the land when you acquire your ownership interest in the land, but the dwelling is never occupied by you or someone else, the period for which you may choose to apply the main residence exemption for the dwelling is the same as in paragraph 2 of this Taxation Determination. Subsection 118-150(5) does not operate to alter the start of the period in paragraph 118-150(4)(b) for which you choose to apply the main residence exemption.
4. If there is a dwelling on land when you acquire your ownership interest in the land and you or someone else occupies the dwelling after that time, subsection 118-150(5) modifies the start of the period in paragraph 118-150(4)(b) for which you choose to apply the main residence exemption. The purpose of subsection 118-150(5) is to extend the period for which you may apply the main residence exemption for up to 4 years before it actually becomes your main residence if you or someone else ceases to occupy the dwelling, whether to enable you to build, repair or renovate a

dwelling or otherwise. The dwelling that is built, repaired or renovated must become your main residence as soon as practicable after the work is completed and must continue to be your main residence for at least 3 months: subsection 118-150(3).

5. You can choose to apply the main residence exemption if:
- (a) there is a dwelling on land when you acquire your ownership interest in the land;
  - (b) you demolish the existing dwelling; and
  - (c) you build a new dwelling on the land.

Subsection 118-150(5) provides in this situation that you may choose to treat the new dwelling as your main residence during the construction period from when you or someone else cease to occupy the existing dwelling until the new dwelling becomes your main residence. This period may not exceed 4 years before it becomes your main residence.

6. A situation might arise where there is a dwelling (dwelling A) on land when you acquire your ownership interest in the land and someone (say, a tenant) occupies dwelling A after that time and you subdivide the land and build a separate dwelling (dwelling B) on it without demolishing dwelling A. Subsection 118-150(5) does not operate in this situation to alter the start of the period in paragraph 118-150(4)(b) for which you choose to apply the main residence exemption for dwelling B to when the tenant ceases to occupy dwelling A if, say, the tenant moves out of dwelling A during the construction of dwelling B due to noise. Section 118-150 applies to dwelling B for the period from when you acquire your ownership interest in the land until dwelling B becomes your main residence, subject to the conditions in subsections 118-150(3) and (4): see paragraph 2 of this Taxation Determination. Draft Taxation Determination TD 1999/D98 provides further information relevant to this situation.

7. Section 118-150 may also apply if there is an existing dwelling on land when you acquire your ownership interest in the land, you build a separate dwelling on the land and you subdivide the land after you construct, or commence to construct, the new dwelling but you do not demolish the original dwelling. Subsection 118-150(5) also does not apply in relation to the new dwelling in this situation if you or someone else occupied the original dwelling after you acquired your ownership interest in the land and then ceased to occupy that dwelling.

#### Note

8. Subsection 160ZZQ(5) of the *Income Tax Assessment Act 1936*, the precursor to subsection 118-150(5) of the ITAA 1997, does not allow the main residence exemption to include the time taken to build a dwelling if there was another dwelling on the land when it was acquired, unless the initial dwelling is demolished.

#### Your comments

9. 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.

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**Commissioner of Taxation**17 November 1999

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*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*

TD 1999/D98

*Subject references:*

build; capital gains; demolish; dwelling; exemption; land; main residence; renovate; repair; subdivide; subdivision

*Legislative references:*

ITAA 1936 160ZZQ(5)

ITAA 1997 118-B; ITAA 1997 118-150; ITAA 1997 118-150(2); ITAA 1997 118-150(3); ITAA 1997 118-150(4); ITAA 1997 118-150(4)(b); ITAA 1997 118-150(5)

*Case references:*

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## ATO references:

NO 99/16031-4

BO CGT main residence summit 1999

ISSN: 1038 - 8982