

TD 94/D97 - Income tax: capital gains: does subsection 160M(12) of the Income Tax Assessment Act 1936 prevent a taxpayer from making an election under subsection 160ZZQ(11A) in respect of a sole or principal residence (SPR) that the taxpayer owned before becoming a resident of Australia?

 This cover sheet is provided for information only. It does not form part of *TD 94/D97 - Income tax: capital gains: does subsection 160M(12) of the Income Tax Assessment Act 1936 prevent a taxpayer from making an election under subsection 160ZZQ(11A) in respect of a sole or principal residence (SPR) that the taxpayer owned before becoming a resident of Australia?*

This document has been finalised by TD 95/7.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: capital gains: does subsection 160M(12) of the *Income Tax Assessment Act 1936* prevent a taxpayer from making an election under subsection 160ZZQ(11A) in respect of a sole or principal residence (SPR) that the taxpayer owned before becoming a resident of Australia?

1. No. Provided the other requirements of subsection 160ZZQ(11) are satisfied, a taxpayer can, in relation to an SPR that he/she owned before becoming a resident of Australia, make an election in accordance with subsection 160ZZQ(11A).
2. Although for Australian tax purposes subsection 160M(12) deems an acquisition date for certain assets on a non-resident becoming an Australian resident taxpayer, it does not mean that the assets were not **owned** by the taxpayer before the taxpayer became a resident. If the taxpayer owned a dwelling overseas and it ceased to be the taxpayer's SPR on the taxpayer becoming an Australian resident, paragraph 160ZZQ(11)(a) can apply.

Example:

In March 1991, Sarah, a UK resident, moved permanently to Australia. She was unable to sell her UK home (which she had bought in 1987) before her departure. As a result, Sarah decided to rent the property. She did not purchase an SPR in Australia.

In April 1993, her tenant made an offer to purchase the UK property. Sarah accepted the offer and and settlement took place the following month.

In her 1992-93 income tax return, Sarah made a valid subsection 160ZZQ(11A) election to exempt from tax the capital gain that accrued in relation to the UK property from March 1991.

Commissioner of Taxation

15/9/94

FOI INDEX DETAIL: Reference No.

Subject Ref: election; non-resident; principal residence exemption

Legislative Ref: ITAA 160M(12); ITAA 160ZZQ(11); ITAA 160ZZQ(11)(a); ITAA 160ZZQ(11A)

ATO Ref: CGT Cell PRE (CGTDET09)

ISSN 1038 - 8982