TD 92/115 - Income tax: capital gains: what is meant by 'land ... used ... primarily for private or domestic purposes in association with a dwelling' in subparagraph 160ZZQ(3)(a)(i)?

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This document has changed over time. This is a consolidated version of the ruling which was published on *16 July 1992*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax : capital gains: what is meant by 'land...used...primarily for private or domestic purposes in association with a dwelling' in subparagraph 160ZZQ(3)(a)(i)?

1. This is a question of fact to be determined having regard to all the circumstances in each case. Whilst the application of subsection 160ZZQ(3) of the *Income Tax Assessment Act 1936* is to be determined at the time of disposal of the dwelling, the extent to which the land *has been used* 'primarily for private or domestic purposes in association with the dwelling' over the period of ownership, will be the relevant matter for consideration.

Example:

A taxpayer buys a home on two hectares of land. One hectare is used continuously to derive income from agistment for five years. Six months prior to the sale of the home, the taxpayer discontinues this practice and uses the land privately in association with the dwelling.

In these circumstances, the one hectare has not been used primarily for private purposes and would not be eligible for exemption.

If the taxpayer had used the land privately for five years and then used it for agistment purposes for six months prior to sale, it may be concluded on the facts, that the land had been used 'primarily' for private purposes in association with the dwelling and would form part of the dwelling on disposal. However, subsection 160ZZQ(21) would apply as there has been concurrent income use of the dwelling when the land was agisted.

Commissioner of Taxation
16/7/92

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