

TD 92/135 - Income tax: capital gains : is the principal residence exemption relevant when the proceeds of sale of a dwelling are treated as income under ordinary concepts?

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! This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

! This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part 4VAAA 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 : is the principal residence exemption relevant when the proceeds of sale of a dwelling are treated as income under ordinary concepts?

1. No. In cases where the sale of a dwelling gives rise to income under subsection 25(1) of the *Income Tax Assessment Act 1936* e.g. as part of a business or from an isolated profit-making transaction, that income remains assessable even if a principal residence exemption is available for CGT purposes.

2. The principal residence exemption is a capital gains tax exemption only and does not extend to exempt from tax ordinary profits or business income.

Example :

A builder constructs a spec home in which he and his family reside while construction proceeds on another spec home. Any profit on sale which gives rise to income is fully assessable to the builder even if a principal residence exemption is available for CGT purposes.

Commissioner of Taxation

30/07/92