



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

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 This document has changed over time. This is a consolidated version of the ruling which was published on *12 May 2010*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Taxation Determination

Income tax: capital gains: is the main 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 section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997), for example, as part of a business or from an isolated profit-making transaction, that income remains assessable even if a main residence exemption is available for CGT purposes.

2. The main residence exemption in Subdivision 118-B of the ITAA 1997 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 main residence exemption is available for CGT purposes.

Commissioner of Taxation

30/07/92