

TD 92/147 - Income tax: capital gains:

! This cover sheet is provided for information only. It does not form part of *TD 92/147 - Income tax: capital gains*:

! This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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: how soon after erection must a dwelling become the sole or principal residence of a taxpayer to satisfy the conditions in subsection 160ZZQ(5)?

1. One of the conditions for an exemption under subsection 160ZZQ(5) of the *Income Tax Assessment Act 1936* is that the dwelling must become the sole or principal residence of a taxpayer as soon as practicable after the dwelling is erected or completed.
2. To ascertain whether a dwelling is erected or completed, the following factors are relevant:
 - (i) the date the Certificate of Occupancy (if applicable) is issued
 - (ii) the date final building inspection approval is given
 - (iii) the date the dwelling becomes structurally complete
 - (iv) the connection of services e.g. electricity, gas, etc.
3. Whether the dwelling becomes the taxpayer's sole or principal residence as soon as practicable after erection or completion, depends on the facts of each case. The personal circumstances of the taxpayer may be relevant in limited cases only.

Example 1:

Kim constructs a post-CGT dwelling intended to become Kim's sole or principal residence. A Certificate of Occupancy issues on 1 March 1991 and Kim arranges for furniture and other belongings to be moved in the following day. However, due to flooding, the removalists are unable to carry out their obligations on that date. Kim moves into the dwelling on the earliest possible date after the flooding has subsided.

In these circumstances, Kim is taken to have moved into the dwelling as soon as practicable after its erection or completion.

Example 2:

Erection of a Tom's dwelling is due for completion on 1 June 1991. On 1 May 1991, Tom decides to travel overseas for a period of 6 months. He leaves on 15 May 1991. Although the dwelling is completed on 1 June 1991, Tom does not move into the dwelling until his return to Australia in November 1991.

In these circumstances, an election that subsection 160ZZQ(5) apply to the dwelling cannot be made as the dwelling has not become Tom's sole or principal residence as soon as practicable after its erection or completion.

Example 3:

Erection of Mary's dwelling is due for completion on 1 March 1991. On 11 February 1991, Mary is directed by her employer to go overseas on an assignment for 4 months, leaving on 25 February 1991. The dwelling is completed on 1 March 1991. Mary moves into the dwelling on her return to Australia in mid June 1991.

As she is required by her employer to go overseas, Mary is taken to have moved into the dwelling as soon as practicable after its erection or completion.

Commissioner of Taxation

27/8/92

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