



TD 92/147 - Income tax: capital gains: how soon after the construction of a dwelling is finished must the dwelling become the main residence of a taxpayer to satisfy the conditions in paragraph 118-150(3)(a) of the Income Tax Assessment Act 1997 ?

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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: how soon after the construction of a dwelling is finished must the dwelling become the main residence of a taxpayer to satisfy the conditions in paragraph 118-150(3)(a) of the *Income Tax Assessment Act 1997*?

1. One of the conditions for making a choice under subsection 118-150(2) of the *Income Tax Assessment Act 1997* (ITAA 1997)¹ is that the dwelling must become the main residence of a taxpayer as soon as practicable after the construction of the dwelling is finished (see paragraph 118-150(3)(a)).

2. To ascertain whether the construction of a dwelling is finished, 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 main residence as soon as practicable after the construction of the dwelling is finished, depends on the facts of each case. The personal circumstances of the taxpayer may be relevant in limited cases only.

Example 1:

4. *Kim constructs a post-CGT dwelling intended to become Kim's main residence. A Certificate of Occupancy issues on 1 March 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.*

5. *In these circumstances, Kim is taken to have moved into the dwelling as soon as practicable after the construction of the dwelling is finished.*

¹ All subsequent legislative references in this Determination are to the ITAA 1997 unless indicated otherwise.

Example 2:

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

7. *In these circumstances, a choice that section 118-150 apply to the dwelling cannot be made as the dwelling has not become Tom's main residence as soon as practicable after the construction of the dwelling is finished.*

Example 3:

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

9. *As she is required by her employer to go overseas, Mary is taken to have moved into the dwelling as soon as practicable after the construction of the dwelling is finished.*

Commissioner of Taxation

27/8/92

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