



***TD 92/158A1 - Addendum - Income tax: capital gains: can the following comprise a 'dwelling' and therefore be eligible for exemption as a sole or principal residence:(i) a structure built underground? (ii) a yacht? (iii) a tent?***

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## Addendum

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### Taxation Determination

Income tax: capital gains: can the following comprise a 'dwelling' and therefore be eligible for exemption as a sole or principal residence:

- (i) a structure built underground?
- (ii) a yacht?
- (iii) a tent?

This Addendum amends Taxation Determination TD 92/158 to reflect the rewritten capital gains tax provisions in Part 3-1 of the *Income Tax Assessment Act 1997*.

#### TD 92/158 is amended as follows:

##### 1. Title

Omit 'sole or principal'; substitute 'main'.

##### 2. Paragraph 1

Omit the paragraph; substitute:

1. The meaning of 'dwelling' is defined in section 118-115 of the *Income Tax Assessment Act 1997* (ITAA 1997). A 'dwelling' includes:

- a unit of accommodation that is a building or is contained in a building and consists wholly or mainly of residential accommodation; and
- a unit of accommodation that is a caravan, houseboat or other mobile home; and
- any land immediately under the unit of accommodation.

However, except as provided in section 118-120 of the ITAA 1997, a dwelling does not include any land adjacent to a building.

##### 3. Paragraph 4

Omit 'subsection 160ZZQ(1)'; substitute 'section 118-115 of the ITAA 1997'.

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## 4. Note

- (a) Omit 'sole or principal'; substitute 'main'.
- (b) Omit '(CGT Determination TD 51)'.

## 5. Related Determinations

Omit 'TD 51'.

## 6. Subject References

- (a) Omit 'principal residence exemption;' and 'underground structure; yacht; tent'.
- (b) Insert 'main residence exemption'.

## 7. Legislative References

- (a) Omit 'ITAA 160ZZQ(1)'.
- (b) Insert 'ITAA 1997 118-115; ITAA 1997 118-120'.

This Addendum applies from 14 September 2006, the date of effect of the repeal of the former capital gains tax provisions in Part IIIA of the *Income Tax Assessment Act 1936* by *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.

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**Commissioner of Taxation**

21 April 2010

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ATO references

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