

TD 92/171 - Income tax: capital gains : does the main residence exemption extend to additional land acquired after the time of acquisition of the residence?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *21 April 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: does the main residence exemption extend to additional land acquired after the time of acquisition of the residence?

1. Yes. The exemption is available provided the following requirements of sections 118-120 and 118-165 of the *Income Tax Assessment Act 1997* are satisfied:

- (i) the additional land (including the area of land on which the dwelling is built) is adjacent to that on which the dwelling is situated;
- (ii) the total area of land is not greater than 2 hectares;
- (iii) the additional land is used primarily for private or domestic purposes in association with the dwelling; and
- (iv) the CGT event that happens in relation to the additional land also happens in relation to the dwelling (or your ownership interest in it).

Note: The exemption applies whether or not the dwelling is a pre or post-CGT dwelling.

Example:

Tom and Mary purchase a home in 1987 and occupy it as their main residence. The home has never been used for income producing purposes.

In 1989, they purchase the vacant block of land that adjoins the land on which their dwelling is situated and construct a private swimming pool. The total of the area of adjacent land and the area of the land on which the home is situated is less than 2 hectares. In 2001, they enter into a contract to sell the home with the adjoining block.

A full main residence exemption is available.

Commissioner of Taxation
22/10/92

Subject Ref: adjacent land; CGT main residence exemption

Legislative Ref: ITAA 1997 118-120; ITAA 1997 118-165

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