

TD 92/172 - Income tax: capital gains: do the dwellings referred to in subsection 160ZZQ(9) have to be post-CGT assets?

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! This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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: do the dwellings referred to in subsection 160ZZQ(9) have to be post-CGT assets?

1. No. Subsection 160ZZQ(9) does not require that the dwellings be post-CGT assets. The subsection merely requires that each spouse has a separate dwelling which is his or her sole or principal residence.

Example:

A husband and wife jointly own both a pre-CGT house (occupied by the wife) and a post-CGT house (occupied by the husband). The wife can nominate her interest in the post-CGT house as her sole or principal residence under subsection 160ZZQ(9).

Assuming the husband nominates his interest in the post-CGT house as his sole or principal residence, full exemption will be available under subsection 160ZZQ(12).

Note: In this case, the spouses are not living separately and apart on a permanent basis (subsection 160K(2)).

Commissioner of Taxation

22/10/92