

TD 92/174 - Income tax: capital gains : how does subsection 160ZZQ(9) interact with subsection 160ZZQ(11)?

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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 This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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 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.

Taxation Determination

Income tax : capital gains : how does subsection 160ZZQ(9) interact with subsection 160ZZQ(11)?

1. A dwelling nominated under subsection 160ZZQ(9) may be one which is deemed to be a person's sole or principal residence because of subsection 160ZZQ(11).

Example:

A husband and wife own a pre-CGT house which they both occupy. Due to a change in employment, the husband moves to another town and they acquire another (post-CGT) house on 1 July 1990. The husband occupies this house for 2 years during the course of his employment contract. On 1 July 1992, he returns to the pre-CGT house which he then continues to occupy with his wife.

To obtain a sole or principal residence exemption on disposal of the post-CGT house, both husband and wife would need to make a nomination under subsection 160ZZQ(9) to cover the period 1 July 1990 until disposal. The husband would also need to make a subsection 160ZZQ(11) election in respect of the period 1 July 1992 until disposal. Unless the subsection 160ZZQ(11) election in respect of the post-CGT house is made by the husband to deem it to be his sole or principal residence from 1 July 1992, that house could not continue to be nominated under subsection 160ZZQ(9) by both husband and wife as their sole or principal residence.

Commissioner of Taxation

22/10/92