



TD 95/7 - Income tax: capital gains: does subsection 160M(12) of the Income Tax Assessment Act 1936 prevent a taxpayer from making an election under subsection 160ZZQ(11A) for a sole or principal residence (SPR) that the taxpayer owned before becoming a resident of Australia?

 This cover sheet is provided for information only. It does not form part of *TD 95/7 - Income tax: capital gains: does subsection 160M(12) of the Income Tax Assessment Act 1936 prevent a taxpayer from making an election under subsection 160ZZQ(11A) for a sole or principal residence (SPR) that the taxpayer owned before becoming a resident of Australia?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *20 April 1995*

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, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: capital gains: does subsection 160M(12) of the *Income Tax Assessment Act 1936* prevent a taxpayer from making an election under subsection 160ZZQ(11A) for a sole or principal residence (SPR) that the taxpayer owned before becoming a resident of Australia?

1. No. A taxpayer can, in relation to a SPR that he/she owned before becoming a resident of Australia, make an election in accordance with subsection 160ZZQ(11A) provided the other requirements of subsection 160ZZQ(11) are satisfied.

2. Although for Australian tax purposes subsection 160M(12) deems an acquisition date for certain assets on a non-resident becoming an Australian resident taxpayer, this does not mean that the assets were not **owned** by the taxpayer before the taxpayer became a resident. If the taxpayer owned a dwelling overseas and it ceased to be the taxpayer's SPR on the taxpayer becoming an Australian resident, paragraph 160ZZQ(11)(a) can apply.

Example:

In March 1991, Sarah, a UK resident, moved permanently to Australia. She was unable to sell her UK home (which she had bought in 1987) before her departure. As a result, Sarah decided to rent the property. She did not purchase a SPR in Australia.

In April 1993, her tenant made an offer to purchase the UK property. Sarah accepted the offer and settlement took place the following month.

In her 1992-93 income tax return, Sarah made a valid subsection 160ZZQ(11A) election to exempt from tax the capital gain that accrued in relation to the UK property from March 1991.

Commissioner of Taxation

20/4/95

FOI INDEX DETAIL: Reference No. I 1016048

Previously issued as Draft TD 94/D97

Subject Ref: election; non-resident; principal residence

Legislative Ref: ITAA 160M(12); ITAA 160ZZQ(11); ITAA 160ZZQ(11)(a); ITAA 160ZZQ(11A)

ATO Ref: CGT Cell PRE (CGTDET09); NAT 94/6258-9

ISSN 1038 - 8982