



TD 95/7 - Income tax: capital gains: does subsection 855-45(3) of the Income Tax Assessment Act 1997 prevent a taxpayer from making a choice that section 118-145 of that Act apply to an overseas dwelling 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 855-45(3) of the Income Tax Assessment Act 1997 prevent a taxpayer from making a choice that section 118-145 of that Act apply to an overseas dwelling 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 12 May 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, 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).

[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 subsection 855-45(3) of the *Income Tax Assessment Act 1997* prevent a taxpayer from making a choice that section 118-145 of that Act apply to an overseas dwelling that the taxpayer owned before becoming a resident of Australia?

1. No. A taxpayer can, in relation to an overseas dwelling that has ceased to be his or her main residence before becoming a resident of Australia, make a choice that section 118-145 of the *Income Tax Assessment Act 1997* (ITAA 1997)¹ apply to treat the dwelling as having continued to be their main residence in their absence, subject to the other requirements of that provision being satisfied.

2. Although for Australian tax purposes subsection 855-45(3) 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 main residence on the taxpayer becoming an Australian resident, section 118-145 can apply.

Note: Section 855-45 does not apply if, immediately after you become an Australian resident, you are a temporary resident as defined in section 995-1 (see section 768-950).

Example:

In July 2007, 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 dwelling in Australia.

In April 2008, her tenant made an offer to purchase the UK property. Sarah accepted the offer and settlement took place the following month.

¹ All legislative references are to the ITAA 1997 unless otherwise indicated.

In preparing her 2007-08 income tax return, Sarah made a choice that section 118-145 apply for the period she was absent from her UK dwelling. The effect of making the choice is that the capital gain or loss made from the sale of her UK property is disregarded in calculating Sarah's net capital gain or loss for the year.

Commissioner of Taxation**20/4/95**

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