



TD 95/9 - Income tax: capital gains: if an election made for the purposes of subsection 160ZZQ(11) of the Income Tax Assessment Act 1936 covers more than one period of absence from a taxpayer's sole or principal residence (SPR), is the six year period referred to in subparagraph 160ZZQ(11)(d)(iii) available in relation to each period of absence?

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 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: if an election made for the purposes of subsection 160ZZQ(11) of the *Income Tax Assessment Act 1936* covers more than one period of absence from a taxpayer's sole or principal residence (SPR), is the six year period referred to in subparagraph 160ZZQ(11)(d)(iii) available in relation to *each* period of absence?

1. Yes. The six year period is measured in relation to a 'cessation time' (sub-subparagraph 160ZZQ(11)(d)(iii)(A)). If a dwelling ceases to be a taxpayer's SPR more than once during the period of its ownership, the maximum six year period of income-producing use can apply in relation to **each** period of absence. All periods of income-producing use during all absences are not aggregated to calculate the six year period.
2. However, in order to be able to exempt a further period or periods of income producing use (i.e. in addition to the six year maximum for the first absence) in relation to the dwelling, it must again become a taxpayer's SPR after each absence for there to be a new 'cessation time' to which subsection 160ZZQ(11) may relate (see paragraph 160ZZQ(11)(a)). Whether the dwelling again becomes the taxpayer's SPR will be a question of fact in each case. Reference should be made to Taxation Determination TD 51 for guidance on factors which may be relevant in deciding this issue.
3. If there are intermittent periods of income producing use during **an** absence, these periods **are** aggregated in calculating the six year period (subparagraph 160ZZQ(11)(d)(iii)).

Example 1

Gary works for the Department of Foreign Affairs and Trade and is posted overseas for a period of 4 years. While he is overseas, his post-CGT SPR is rented. On return to Australia, Gary resumes residence in the dwelling for a further period of 4 years. He is posted overseas for another period of 4 years. The dwelling is rented again during this absence. On return, Gary sells the dwelling and elects for the purposes of subsection 160ZZQ(11) for two periods of income-producing use totalling 8 years.

*Subsection 160ZZQ(11) treats the dwelling as Gary's SPR during the two periods of absence. This is because the dwelling ceases to be Gary's SPR on two separate occasions and the periods of income-producing use have not exceeded six years in relation to **each** period of absence.*

Example 2

Peta ceases to use her post-CGT dwelling as her SPR and rents it out for five years. She leaves it vacant for one year, rents it out for a further three years, then sells the dwelling.

As there has only been one 'cessation' of use of the property as a SPR, Peta can elect under subsection 160ZZQ(11A) only for the period that ends when the property has been used to produce income for 6 years. The exemption covers the first five years of rental use, the period the dwelling was vacant, and a further one year of rental use. For the remaining two year period of its use, exemption is not available.

Commissioner of Taxation

20/4/95

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