

TD 92/158 - Income tax: capital gains: can the following comprise a 'dwelling' and therefore be eligible for exemption as a sole or principal residence (i) a structure built underground? (ii) a yacht? (iii) a tent?

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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 This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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: can the following comprise a 'dwelling' and therefore be eligible for exemption as a sole or principal residence:

- (i) a structure built underground?**
- (ii) a yacht?**
- (iii) a tent?**

1. A 'dwelling' comprises a unit of residential accommodation contained in a building. It also extends to include caravans, houseboats or other mobile homes (subsection 160ZZQ(1) of the *Income Tax Assessment Act 1936*).

A STRUCTURE BUILT UNDERGROUND

2. A structure built underground (e.g. an underground home at Coober Pedy) would constitute a 'dwelling'. There is no requirement that a residential building be constructed above the ground to qualify for exemption.

A YACHT

3. A yacht may, under certain circumstances, constitute a mobile home or houseboat and therefore, a 'dwelling' for exemption purposes. Provided that the level of facilities is such as to make the yacht habitable, the yacht will be accepted as a 'dwelling'.

A TENT

4. In most circumstances, a tent will not be regarded as a substantial structure within the scope envisaged by the definition of 'dwelling' in subsection 160ZZQ(1). As the definition connotes a substantial permanent structure, a tent would usually not satisfy this requirement.

Note: Whether a dwelling is a person's sole or principal residence is a question of fact (CGT Determination TD 51).

Commissioner of Taxation

17/09/92

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