

# ***TD 51 - Capital Gains: What factors are taken into account in determining whether or not a dwelling is a taxpayer's sole or principal residence?***

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

## CGT Determination Number 51

### **Capital Gains: What factors are taken into account in determining whether or not a dwelling is a taxpayer's sole or principal residence?**

#### **Determination**

1. Whether a dwelling is a taxpayer's sole or principal residence is an issue which depends on the facts in each case.
2. Some relevant factors may include, but are not limited to:
  - (i) the length of time the taxpayer has lived in the dwelling
  - (ii) the place of residence of the taxpayer's family
  - (iii) whether the taxpayer has moved his or her personal belongings into the dwelling
  - (iv) the address to which the taxpayer has his or her mail delivered
  - (v) the taxpayer's address on the Electoral Roll
  - (vi) the connection of services such as telephone, gas and electricity
  - (vii) the taxpayer's intention in occupying the dwelling

The relevance and weight to be given to each of these or other factors will depend upon the circumstances of each particular case.

3. Mere intention to construct a dwelling or to occupy a dwelling as a sole or principal residence, but without actually doing so, is insufficient to obtain the exemption.

#### **COMMISSIONER OF TAXATION**

26 March 1992

FOI INDEX DETAIL: Reference No. CGT 51

Subject Ref: Principal residence exemption; occupation period

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