


TD 1999/D100 - Income tax: capital gains: what is meant by the phrase 'to the extent that' in subsection 118-120(1) of the Income Tax Assessment Act 1997 where it refers to 'land that is adjacent to a dwelling ... to the extent that you used the land primarily for private or domestic purposes in association with the dwelling as if it were a dwelling?'

 This cover sheet is provided for information only. It does not form part of *TD 1999/D100 - Income tax: capital gains: what is meant by the phrase 'to the extent that' in subsection 118-120(1) of the Income Tax Assessment Act 1997 where it refers to 'land that is adjacent to a dwelling ... to the extent that you used the land primarily for private or domestic purposes in association with the dwelling as if it were a dwelling?'*

This document has been finalised by TD 2000/15.



Draft Taxation Determination

Income tax: capital gains: what is meant by the phrase ‘to the extent that’ in subsection 118-120(1) of the *Income Tax Assessment Act 1997* where it refers to ‘land that is adjacent to a dwelling ... to the extent that you used the land primarily for private or domestic purposes in association with the dwelling as if it were a dwelling?’

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

1. This is a question of fact and degree to be determined having regard to all of the circumstances in each particular case. While the application of subsection 118-120(1) of the *Income Tax Assessment Act 1997* (‘ITAA 1997’) is to be determined at the time of any CGT event which happens to the dwelling, it is the extent to which you used the land ‘primarily for private or domestic purposes in association with the dwelling’ throughout the ownership period that is relevant.
2. The words ‘to the extent’ contemplate an apportionment if for some part of the ownership period the land has not been used ‘primarily for private or domestic purposes in association with the dwelling’.
3. We take the same view as that in paragraphs 1 and 2 above, adapted as necessary, in relation to the meaning of the phrase ‘to the extent that’ in paragraph 160ZZQ(3)(a) of the *Income Tax Assessment Act 1936* (‘ITAA 1936’).

Note 1

4. Whether you used the land ‘primarily’ for private or domestic purposes in association with your dwelling is also a question of fact and degree. It is a different, though related, question from the question of the extent to which you used the land for the required purposes.

Note 2

5. Subsection 118-120(1), in referring to the extent to which 'you' used the land and in referring to the purposes for which 'you' used the land, is not concerned with any use of the land by anyone else.

Example

6. *John buys a home on 2 hectares of land in October 1993. One hectare of land is used continuously to derive income from agistment for 4 years. For twelve months before John sells the home in October 1998, he ceases to use the land for agistment and uses it privately in association with the dwelling.*

7. *John is entitled to disregard 20% of any capital gain or capital loss made in respect of the one hectare of land previously used for agistment purposes. This is the extent to which the land has been used primarily for private or domestic purposes in association with the dwelling during the period of ownership.*

Date of effect

8. This draft Taxation Determination rewrites and, when it is finalised, will replace Taxation Determination TD 92/115. It will have a future application and, to the extent that it is more favourable to taxpayers than TD 92/115, a past application (subject to the statutory limits of section 170 of the ITAA 1936). TD 92/115 will be withdrawn on finalisation of this draft Tax Determination.

Your comments

9. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by Date: 17 December 1999
Contact Officer: Lyn Peatfield
E-mail address: Lyn.Peatfield@ato.gov.au
Telephone: (08) 8208 1337
Facsimile: (08) 8208 1399
Address: Ms Lyn Peatfield
Australian Taxation Office
GPO Box 800
Adelaide SA 5001.

Commissioner of Taxation

17 November 1999

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TD 1999/D98

Subject references:

adjacent; CGT event; dwelling; land; main residence; ownership period; primary use of land; to the extent

Legislative references:

ITAA 1936 160ZZQ(3)(a); ITAA 1936 170

ITAA 1997 118-120(1)

Case references:

ATO references:

NO 99/16032-2

BO CGT main residence summit 1999

ISSN: 1038 - 8982