MLC TechConnect

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Qualifying for main residence CGT exemption

Selling the family home may trigger a capital gains tax liability depending on whether a full or partial main residence CGT exemption applies.

Background

A capital gain or loss realised from the sale of a dwelling is disregarded if it was the main residence for the entire ownership period.

Where a client has been absent from the dwelling for a period, circumstances determine whether a full, partial or no main residence capital gains tax (CGT) exemption applies when the dwelling is sold.

CGT does not apply to pre-CGT assets (assets purchased or inherited prior to 20 September 1985), including a residence. Factors that may affect the CGT implications upon the sale of a dwelling include whether:

- there was a delay before moving in
- the dwelling was used to produce income
- the client changed main residences during the ownership period, and
- the client was a non-resident for tax purposes.

A good understanding of potential CGT implications will help you inform the client accordingly.

This article examines the CGT rules and concepts regarding the main residence exemption, the basic case for the full main residence exemption, and how to calculate the capital gain or loss when only eligible for a partial main residence exemption.

This article provides general guidance regarding the CGT implications of selling a property that was a client's main residence. It is imperative a client seek specialised tax and legal advice specific to their circumstances.

Contents

Full main residence exemption

Basic case

The full main residence exemption applies if **all** the following applies on sale of that dwelling:

- the client is an individual[1]
- they resided in the dwelling for the entire ownership period[2]
- the dwelling has not been used to produce assessable income (eg used in a business)
- the dwelling is situated on land that does not exceed two hectares, and
- the individual is not an excluded foreign resident at the time of the CGT event (discussed later).

This article does not discuss the tax implications for a beneficiary inheriting a main residence from a deceased estate. For information on this, please refer to our article **Estate planning and real property**.

What is a dwelling?

A dwelling[3] is any unit of accommodation that is used wholly or mainly for residential purposes, such as a house, strata-titled unit/apartment, retirement village, caravan, houseboat or other mobile home. It also includes any land immediately under the dwelling.

Unless otherwise stated, the words dwelling, main residence, home, property and other words to that effect are used interchangeably to mean a dwelling that is a client's main residence or one they can treat as their main residence.

Adjacent land up to two hectares

Although not considered part of the dwelling, a client's main residence may also include adjacent land of up to two hectares around the dwelling, provided the land is used for mainly private and domestic purposes[4]. If the adjacent land exceeds two hectares, the client can choose which two hectares of adjacent land is included under the main residence exemption[5].

When is a dwelling your main residence?

The ATO considers several factors when determining if a dwelling is considered a client's main residence[6], and the importance placed on certain factors varies depending on the circumstances of each case. The factors include:

- whether they / their family live there
- how long they have lived there
- their intention to occupy the dwelling
- whether their mail is delivered to the premises
- whether their personal belongings there
- whether it is listed as their address on the electoral roll, and
- whether they have connected utilities.

If the client acquires a dwelling and moves in 'as soon as practicable', it is treated as their main residence from the acquisition date.

1 Trusts and companies are not eligible for main residence exemption, except in certain cases for a dwelling owned by the trustee of a deceased estate or special disability trust.
2 ITAA97 s118.125. Ownership period for a dwelling is the period on or after 20 September 1985 when the client had an interest in the dwelling or in land (acquired on or after 20 September 1985) on which the dwelling is later built.
3 ITAA97 s118.115
4 ITAA97 s118.120
5 ATO TD 1999/67
6 These factors are also used to determine if a person has moved out of their main residence.

What if there is a delay in moving in?

If the client does not move in at the first available opportunity, the dwelling cannot be treated as a main residence from the date they acquired their interest ('acquisition date') and a partial exemption may apply.

There are exceptions where the client cannot move in due to unforeseen circumstances, such as illness or travel for work-related assignments. In these cases, the dwelling is still treated as their main residence from the acquisition date if they move in once the reason for causing the delay ends.

The ATO does not consider renting out the home before they move in as a valid reason for the delay in moving into the home as soon as practicable. In these cases, the dwelling is not eligible for the full main residence exemption and a capital gain or loss may apply on the sale of the home (refer to partial main residence exemption section on page 4).

Advice tip

A client makes the choice to apply the main residence exemption for a dwelling in the financial year that a CGT event occurs in relation to that dwelling. The choice is made when it is decided whether to apply the full or partial main residence exemption for a capital gain or loss incurred in the client's tax return for the relevant financial year of the CGT event. The CGT event for property usually occurs on the date that the client enters a contract to sell (ie the contract date rather than the settlement date).

Extending the main residence exemption

If a client moves out and no longer lives in their home, it will usually cease to be their main residence. However, the client can choose to continue treating the home as their main residence in certain circumstances, provided they are not treating any another dwelling as their main residence[7]. How long they can continue to treat the existing home as their main residence depends on whether it is used to produce income.

Home not used for income-producing purposes

Where the existing home is not used to produce income, the client can treat it as their main residence indefinitely if they have not chosen to treat another dwelling as their main residence. For example, a client moves into an aged care facility, leaves their existing home vacant but it is not rented. The full main residence exemption applies indefinitely if they decided to sell it in the future, regardless of how long they live in the aged care facility.

Home used to produce income – six-year absence

If the main residence is used for income-producing purposes, such as being rented during their absence, the maximum period that the dwelling can continue to be treated as the client's main residence while being used to produce income is six years.

If the client is absent and rents the dwelling for more than six years, then a partial main residence exemption applies. The dwelling is not considered their main residence for the period exceeding six years that it was used to produce income.

This six-year period will include the times when the home is vacant (where the tenant moves out) and the property continues to be available for rent.

The six-year period ceases where the client moves back in or the home is left vacant and there is no intention to use it to produce assessable income. If the client genuinely moves back in and the property becomes their main residence again, another six year period will be available if they vacate the home and rent it out again.

Example 1 – Home rented out during absence

Kelly bought her main residence on 1 March 2015 and moved in immediately, living there until 1 December 2019 before moving interstate for work. She rented out her home while working interstate for nearly five years. She moved back into her main residence on 1 November 2024. This was her only property and she chose to treat it as her main residence during her absence.

As Kelly was using the home for income-producing purposes, she can continue to treat the home as her main residence for up to six years. If Kelly sells the home, she can disregard any capital gain or loss.

Furthermore, if Kelly moves interstate again after a period where the home was her main residence, she is eligible for another six-year absence if it's rented out again. Hence, if she returns and moves back in after another five years interstate and subsequently sells the home, she is eligible for the full main residence exemption and can disregard any capital gain or loss from the sale.

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7 ITAA97 s118.145

Example 2 – Home produced income and was also vacant during absence

Assume the same scenario in Example 1 except that this time Kelly moved interstate on 1 April 2018 for eight years. Initially, Kelly was on a one-year contract so she did not rent out her home. When her contract was extended for another three years, Kelly put it up for rent after a year and it was rented for three years.

Kelly then thought she would return home but instead took up another one-year contract and did not rent out her home for that year. However, her contract was extended for another three years and her home was again rented out for those three years.

Kelly finally returned after eight years away and moved back into her main residence immediately. If she sold the home in the future, she would be eligible for the full main residence exemption as the aggregate period where it produced income was exactly six years, with two years where the home was left vacant.

Moving between main residences

If a client purchases and moves into a new home as soon as practicable before selling the previous home, both dwellings are treated as their main residence for up to six months[8]. For this to apply, the client must have:

- lived in the existing home where it was their main residence for at least three continuous months of the past 12 months the dwelling is disposed, and
- the existing home did not produce income during that 12-month period when it was not their main residence.

If the existing home is sold within six months after purchasing the new home, both dwellings are exempt from CGT during the overlapping period when the new home was acquired and the existing home sold.

Where the existing home sells after six months, the client can treat both properties as their main residence onlyfor the six months leading up to the settlement date on the sale of the existing home. One of the properties cannot be treated as the main residence between the acquisition date of the new home and six months before the existing home is sold. The capital gain or loss is applicable to the property that the client chooses not to treat as their main residence during this period. For more information refer to the **ATO website**.

Building on vacant land before moving in

Vacant land is normally not exempt from CGT until a dwelling is built on the land and it becomes a client's main residence. However, a rule exists that allows a client to treat land as their main residence for up to four years before a dwelling on that land becomes their main residence[9]. To be eligible, a client with an i nterest in the land (excluding a life interest) must:

- build, repair or renovate a dwelling (or complete a partly constructed dwelling) on that land
- move in as soon as practicable after completion
- use it as their main residence for a minimum of three months from the time they move in, and
- not treat any other dwelling as their main residence during the period (except where moving between main residences).

If it takes longer than four years, the main residence exemption can only be applied for the four years immediately before the completed dwelling becomes the main residence.

Partial main residence exemption

Dwelling was main residence for part of ownership period

A client is only eligible for a partial main residence exemption available when they dispose of a dwelling if the:

- client is an individual and not an excluded foreign resident (refer to 'excluded foreign resident' section)
- dwelling was not their main residence during their entire ownership period, and
- interest did not pass to them because they were a beneficiary or as a trustee of a deceased estate[10].

8 ITAA97 s118.140

9 ITAA97 s118.150

10 ITAA97 s118.185

If the client has made a capital gain, the taxable portion of that capital gain after applying the partial main residence exemption is calculated as follows:

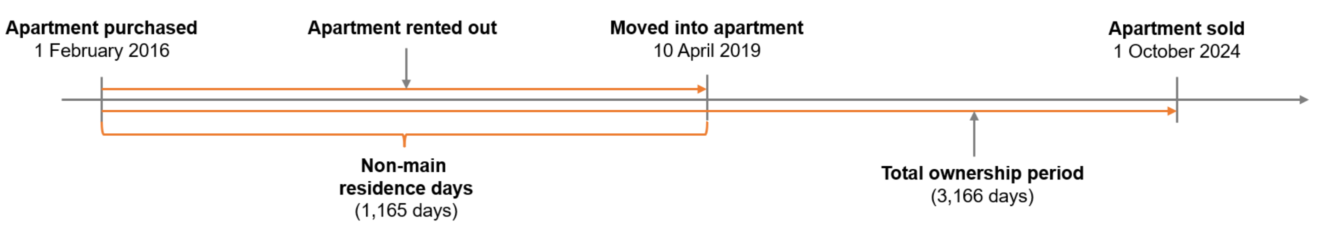
$$\text{Taxable portion of capital gain (or loss)} = \text{Capital gain (or loss)} \times \frac{\text{Days where dwelling was } \textbf{not} \text{ main residence}}{\text{Total days in ownership period}}$$

Where the asset was held for more than 12 months, the client may be eligible for a 50% discount on the taxable portion. Where there is a capital loss, the 'taxable portion of a capital loss' can be used to offset other capital gains or may be carried forward to offset future capital gains.

Example 3 – Home rented before becoming main residence

Jeremy purchased an apartment on 1 February 2016 for $530,000, which he rented out immediately until 10 April 2019, after which he decided to move into the property and use it as his main residence. The apartment was sold on 1 October 2024 for $795,000 (total ownership of 3,166 days), which gives him a capital gain of $265,000.

As Jeremy rented the property out first before moving in, the six-year absence rule does not apply and the apartment was not his main residence during the period it was rented out from 1 February 2016 to 10 April 2019 (1,165 days).



The taxable portion of his capital gain is calculated as below:

Taxable portion of capital gain = $265,000 x (1,165 days / 3,166 days)

= $97,512 ($48,756 after applying 50% CGT discount)

Advice tip

Other elements of the cost base for a property have been ignored, which may include legal fees, stamp duty, depreciation, capital improvements and other related expenses. These elements will potentially increase a client's cost base and reduce the capital gain or may create a capital loss. It is worthwhile maintaining these expenses in CGT records to assist with determining CGT when the asset is sold.

First use to produce income rule

Usually, the cost base of a CGT asset is based on the amount paid for an asset at the time it was acquired. However, a special rule exists for calculating the cost base of a dwelling if a client starts using their main residence to produce income for the first time after 20 August 1996 ('home first use to produce income' rule[11]). Under this rule, a client is taken to have acquired the dwelling at market value when it first became income producing, if all the following apply:

- the client acquired the dwelling on or after 20 September 1985 and it was their main residence
- it is used to produce income for the first time after 20 August 1996
- the client would only receive a partial main residence exemption on sale as it produced income, and
- it would have received a full main residence exemption if sold before it was to first used to produce income.

Clients who meet all the criteria do not have a choice to apply this rule. If applicable, the client is deemed to acquire the dwelling on the day it was first used to produce income. The 50% CGT discount will only apply if it is sold at least 12 months after this date. Where the client applies the six-year absence rule and they qualify for a full main residence CGT exemption upon the sale of the home, this rule does not apply.

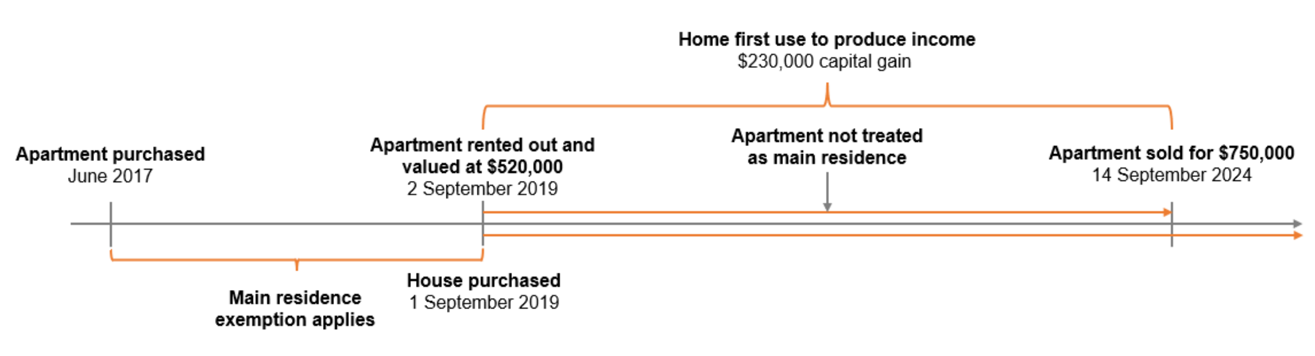
11 ITAA97 s118.192

Example 4 – Apartment becomes a rental property

Elle bought an apartment in June 2017 for $450,000, which was her main residence until she acquired a new house. She moved into the new home on 1 September 2019. The old apartment was rented out on 2 September 2019 and, on that day, the apartment had a market valuation of $520,000.

Elle decided to treat the new house as her main residence immediately, so the apartment ceased being her main residence and was not eligible to continue to be treated as her main residence after moving out.

On 14 September 2024, the apartment was sold for $750,000. Under the home first use to produce income rule, the revised cost base for the apartment is $520,000 and Elle was deemed to have acquired it on 2 September 2019, giving Elle a capital gain $230,000 on the apartment.



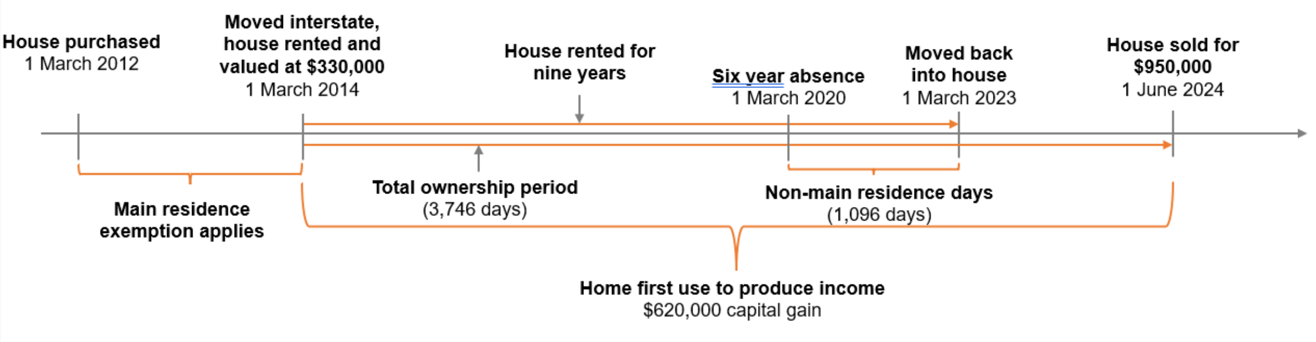
As the disposal occurred at least 12 months after the deemed acquisition date, Elle is also eligible for the 50% CGT discount on the capital gain, which means a taxable capital gain of $115,000 is included in Elle's 2024/25 FY tax return, assuming Elle has no capital losses.

Example 5 – Home rented for more than six years, first use to produce income

John bought his main residence on 1 March 2012. He moved interstate for work on 28 February 2014. He rented the home for nine years while living away from 1 March 2014 until 28 February 2023. The market value of the residence on 1 March 2014 was $330,000. He moved back into the main residence on 1 March 2023 until he sold it on 1 June 2024 for $950,000.

Although John chose to treat the home as his main residence during his absence, he is only eligible for a partial main residence exemption as it was used to produce income for nine years and therefore it was not his main residence for the entire ownership period.

Under the 'home first use to produce income rule', he is deemed to have acquired it on 1 March 2014 for $330,000, which means there is a capital gain of $620,000. However, he is still able to treat the home as his main residence for up to the six years during his absence when it produced income.



While his total ownership days were 3,746 days (ie 1 March 2014 to 1 June 2024), the home was not his main residence for 1,096 days during the last three years of being rented (ie 1 March 2020 to 28 February 2023). The taxable portion of her capital gain is calculated as below:

Taxable portion of capital gain = $620,000 x (1,096 days / 3,746 days)

= $181,399 ($90,699 after applying 50% CGT discount)

Main residence partly income producing

Where a dwelling is a client's main residence, but part of the home is used to produce assessable income (eg where a room is rented or used for Airbnb, or partly for business use), the client may only claim a partial main residence exemption on any capital gain arising from the sale of the home.

The interest deductibility test is based on the percentage of the floor area of the main residence used for income-producing purposes. This portion of the interest would be otherwise deductible if a loan was taken out to acquire the main residence (whether or not a loan actually exists)[12].

The proportion of the capital gain or loss that is attributed to the floor area used for income-producing purposes is the taxable portion of the capital gain.

Example 6 – Part of main residence used for Airbnb

Peter purchased a two-bedroom apartment in August 2019 and used it as his main residence immediately. However, he also decided to lease the second bedroom using Airbnb when he moved in.

He eventually sold the apartment in September 2024 and there is a capital gain of $150,000. He lived in the unit and leased out the second room on Airbnb for the entire time. Under the interest deductibility test, it is deemed that 40% of the floor area was used for income-producing purposes.

Hence, the taxable portion of the capital gain is $60,000 (which is also eligible for the 50% CGT discount), while the remaining $90,000 is exempt from CGT under the partial main residence exemption.

Other considerations

Excluded foreign resident

Since 1 July 2020, the main residence exemption is generally no longer available to clients who are foreign residents at the time a CGT event occurs relating to a dwelling, regardless of whether the dwelling would otherwise qualify for a full or partial main residence exemption[13]. However, foreign residents are eligible for the main residence exemption within six years of becoming a non-resident if a certain life event occurs. Life events include death (of spouse or child under age 18), terminal medical condition (of individual, spouse or child under 18), or the relationship breakdown of the individual.

If a non-resident genuinely resumes being an Australian resident and a dwelling is subsequently sold later while they are an Australian resident, the main residence exemption can apply to that dwelling subject to the rules discussed throughout this article.

Periods of foreign residency

Since 9 May 2012, the 50% CGT discount is not available to non-residents and, in some circumstances, to the period an Australian resident was non-resident[14].

This may apply where the owner of a main residence was non-resident through part of the ownership period and could not apply the main residence CGT exemption for all periods while non-resident.

12 ITAA97 s118.190

13 ITAA97 s118.110

14 ITAA97 s115.105

If the main residence is disposed of and:

- if they are not resident at the time of disposal, they will be ineligible for the main residence exemption (as explained above) and cannot apply the 50% exemption, or
- if they are resident at the time of disposal but cannot apply the main residence exemption for the whole period they were non-resident, for example it may have been rented for more than six years,

then the 50% discount is not be available for the period when the person was non-resident.

If the property was owned as at 9 May 2012 and they were resident at that time, then the 50% discount may be available in relation to the ownership period before that time. The rules are complex and appropriate tax advice should be obtained.

Subdividing adjacent land

If a dwelling purchased after 20 September 1985 is a person's main residence and they subdivide the land, this may affect the main residence exemption applicable to any blocks of land the dwelling is not situated on.

The parcel of vacant land is not exempt from CGT under the main residence exemption if the client disposes of the land separately from the dwelling[15]. This means that a capital gain may be assessed for that block of land from the date the client first acquired the property.

If the subdivided blocks were sold together with the block containing the dwelling, despite the subdivision, the block without the dwelling will also qualify for a full main residence CGT exemption.

Issues affecting couples

Each member of a couple owns a dwelling before moving in

If each member of a couple owned a dwelling that was their main residence before they decided to move in together, they will only be able to treat one of those dwellings as their main residence from the time they start living together.

Each spouse lives in a different main residence

If each spouse treats different dwellings as their main residence for a certain period, each spouse can claim an exemption on the home that was their main residence[16].

If a spouse nominates a home and they own 50% or less interest in that home, they will qualify for a CGT exemption on their share. However, if their share is greater than 50% in the nominated homes, the exemption only applies for half the period that they nominated different homes as their main residence.

This rule applies to each home owned by the spouses, regardless of whether spouses have sole ownership or own the homes jointly (ie joint tenancy or tenants in common).

Marriage or relationship breakdown - rollover provisions

If a client transfers an asset to their spouse due to marriage or relationship breakdown, a CGT rollover of the asset may apply[17]. The transferring spouse disregards any capital gain or loss and the spouse receiving the asset may be liable for a capital gain or loss when they eventually dispose of the asset.

The receiving spouse inherits the cost base and acquisition date of the transferring spouse. For a dwelling, this means the receiving spouse will need to consider the history of the dwelling and whether it qualifies for a full or partial main residence exemption. For these provisions to apply, the transfer must occur because of a court order, formal agreement (eg binding financial agreement) or an award, and a client cannot choose whether the rollover applies.

15 ITAA97 s118.165

16 ITAA97 s118.170

17 ITAA97 s118.180

Advice considerations

Social security, aged care and the main residence

There are many complex rules surrounding the main residence that can affect a client's entitlement to Centrelink income support payments and may also impact the upfront and ongoing costs of residential aged care.

This may include the decision to sell or retain a main residence, or whether to rent out the main residence. The main residence is usually an exempt asset for social security purposes, but only in certain circumstances for aged care purposes.

While there are many exemptions available for the main residence, any decisions made regarding the main residence should also consider impacts for social security and aged care purposes where applicable.

For more information on the social security and aged care treatment of the home, refer to our articles **Homeowner status and the principal home** and **Aged care and the family home**.

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