

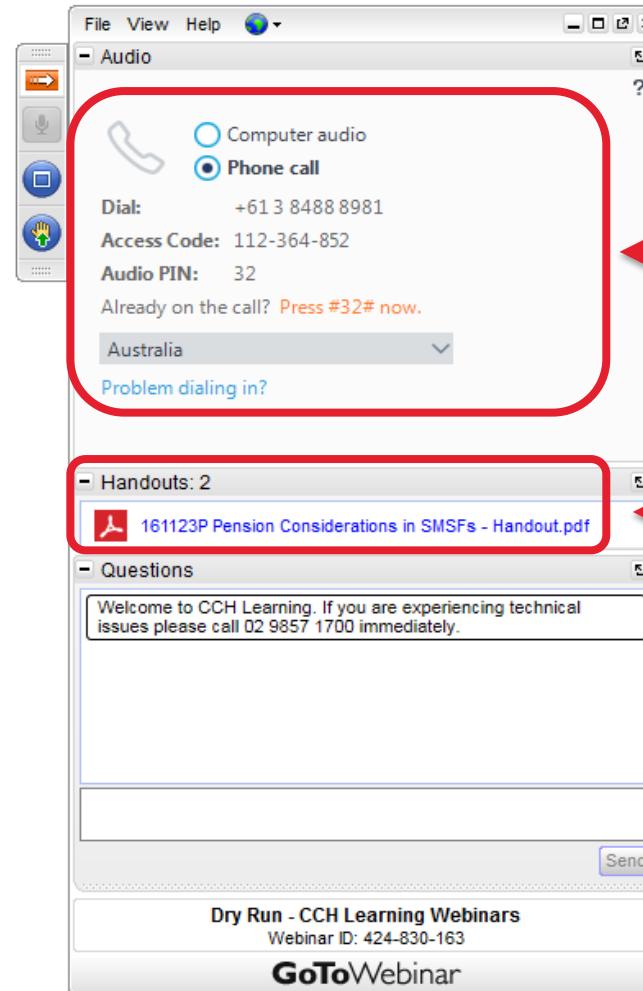
CGT and the Main Residence Exemption: Key Insights

Carlo Di Loreto

Tuesday, 2 September 2025



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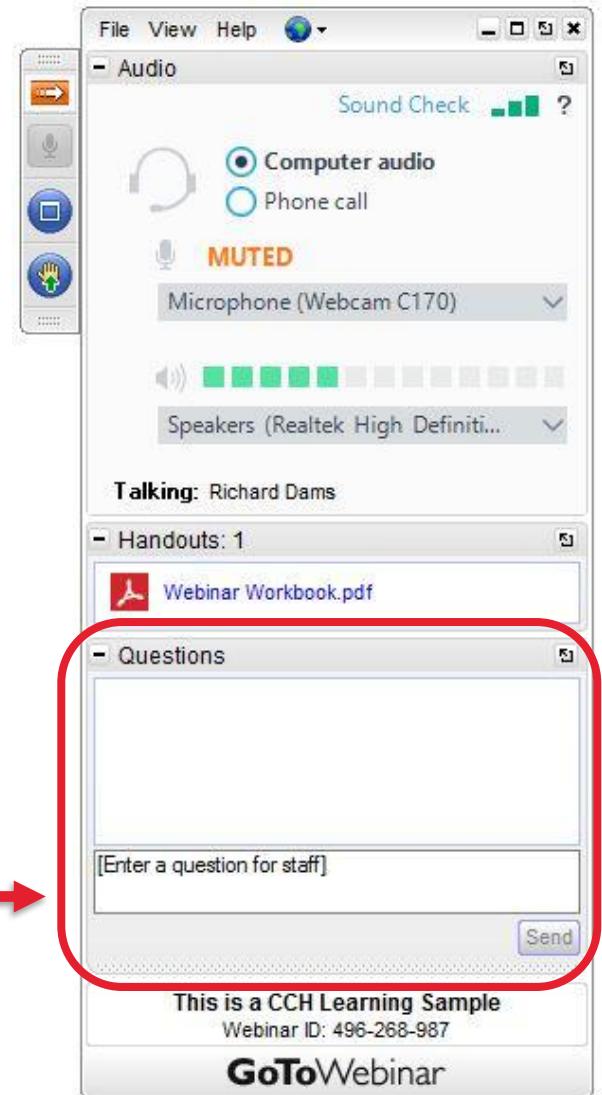


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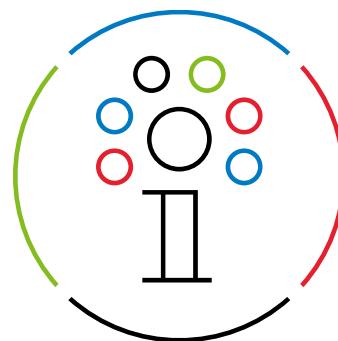
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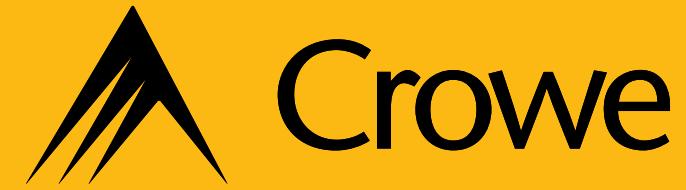
Carlo Di Loreto
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Today's session will cover



CGT Main Residence

- Exemption
- Basic case & concepts
- Rules that extend the exemption
- Rules that limit the exemption
- Partial exemption
- Main residence exemption & deceased estates



CGT main residence exemption

Capital gains tax main residence exemption

- most advisers will have experienced seemingly ‘straight forward’ MRE questions, they have subsequently found to be complex, usually because of a unique set of facts
- like many problems encountered in practice, a solid understanding of ‘first principles’ and how to apply them will generally allow you to reach a solution
- this webinar will re-cap the first principles of the CGT MRE and provide guidance on how they can be applied in practice



Main residence

- term ‘main residence’ is not defined
- disposal of a ‘dwelling’ is exempt from CGT [s 118-110] if:
 - you are an individual; and
 - the dwelling was your main residence during your ‘ownership period’



Main residence

- **Dwelling** [s 118-115]:
 - a unit of accommodation that:
 - is a building or contained in a building; and
 - consists wholly or mainly of residential accommodation
 - caravan, houseboat, mobile home
 - land immediately underneath

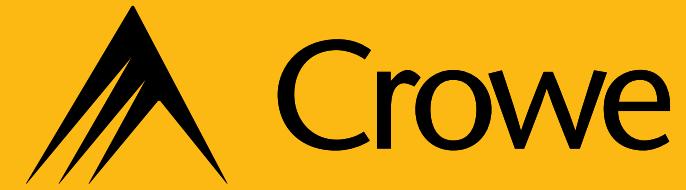


Main residence

- Ownership period [s 118-125]:
 - period on or after 20 September 1985 when you had an ownership interest
 - Typically starts and ends on settlement day of purchase and sale
- Ownership interest [s 118-130]:
 - land: legal or equitable interest
 - dwelling that is not a flat or home unit: as above or a license or right to occupy
 - flat or home unit: as above plus includes a share in company that owns a legal or equitable interest in the land on which the flat or home unit is erected, and which gives right to occupy

Main residence: establishing

- establishing a dwelling as your main residence [TD 51 (*Withdrawn*)]
 - length of time lived there (3 months rule of thumb)
 - where does your family live
 - location of personal belongings
 - receive mail there
 - address on the Electoral Roll
 - connection of telephone, gas, electricity etc.
- mere intention to construct or occupy dwelling as main residence not sufficient
- factors now confirmed in AAT cases & ATO's Guide to CGT



Main residence exemption: adjacent land

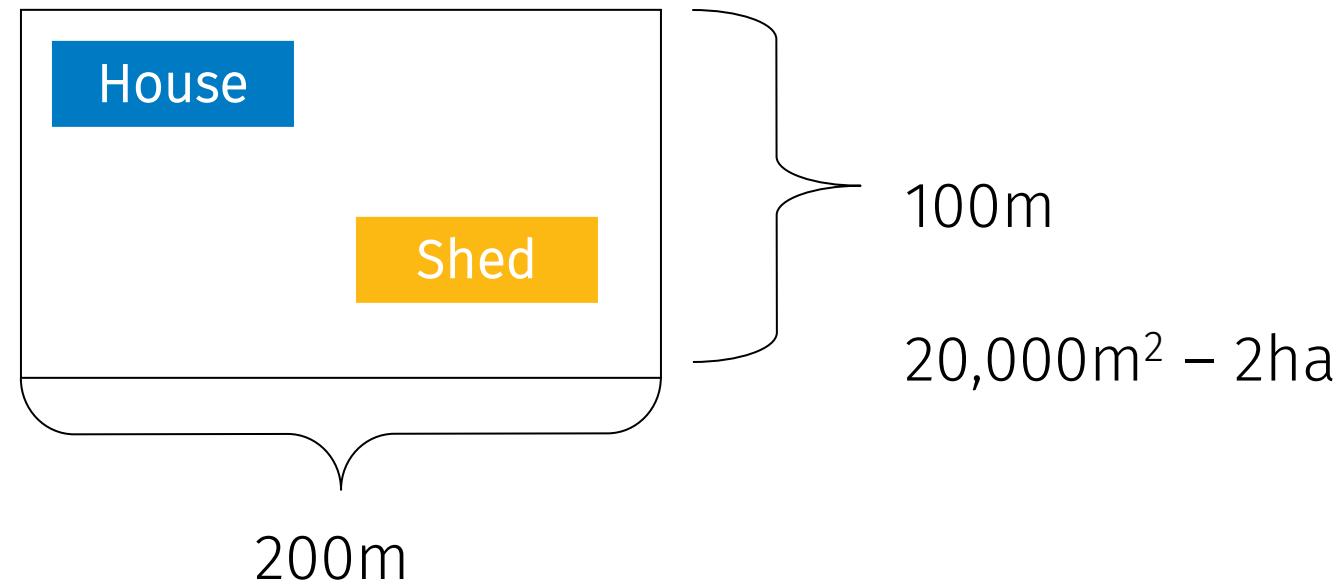
Main residence: adjacent land

- CGT exemption applies to adjacent land [s 118-120]:
 - up to 2 hectares, including land under the dwelling
 - used primarily for private or domestic purposes in association with dwelling
 - if exceeds 2 ha, can choose which 2ha exemption applies to [TD 1999/67]
 - land does not have to directly adjoin dwelling (can be close or near to be adjacent [TD 1999/68])
 - must be disposed under same CGT event as the dwelling



Main residence: adjacent land

- Must demonstrate that adjacent land primarily for private/domestic purposes in association with the dwelling, example:



- part of the land may not have requisite connection to the dwelling - perhaps a shed is used to store farming or business items



Main residence: adjacent land

Example

- Wayne & Vicky own a house in a country town;
- Vicky owns horse & rides in local competitions;
- No room in backyard – so bought block of land two streets away to run horses;
- Total area of land on which house & horse yard situated is < 2ha;
- Horse yard used primarily for private or domestic purposes;
- Horse yard considered to be ‘adjacent land’.



Main residence: adjacent land

Example

- Troy buys home on 2 hectares land in October 2019;
- 1ha used continuously to derive income from agistment for 4 years;
- For 12 months leading up to sale of home in October 2024, he ceased to use land for agistment. Used privately in association with dwelling;
- Troy is entitled to disregard 20% of any capital gain or loss in respect of 1 ha previously used for agistment;
- That is, to the extent land has been used primarily for private or domestic purposes in association with the dwelling during period of ownership.



Main residence: compulsory acquisition of adjacent land

- exemption extended to capital gain from a compulsory acquisition [s 118-250] that happens only to land (or a structure) that is adjacent to:
 - a dwelling that is your main residence;
 - a dwelling that passed to you as a beneficiary or trustee of a deceased estate, to the extent it was used for private or domestic purposes.
- CGT event does not happen to the dwelling
- the ‘exempt land’ must be part of dwelling’s adjacent land at time of CGT event;
- generally, 2ha limit on exempt area:
 - sum of area of adjacent land and area underneath dwelling
 - area of adjacent land for subsequent realisation of the dwelling reduced



Main residence: compulsory acquisition of adjacent land

- ‘Compulsory acquisition’ includes action by:
 - Australian Government agency (Federal, State or Territory);
 - authority of an Australian Government agency;
 - non-Government entity authorised to do so under power conferred by Australian law;
 - disposal by taxpayer to an entity for an event that meets conditions – where land acquired by agreement; and
 - if no agreement, notice issued that land will be compulsorily acquired.

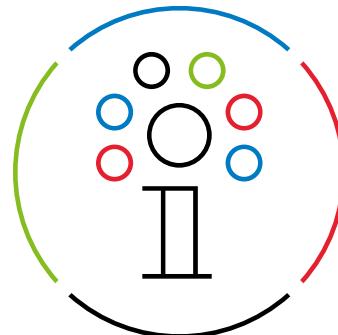


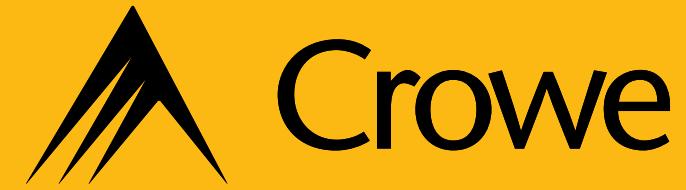
Poll Question #1

Under the Main Residence Exemption rules, the mere intention to construct or occupy the dwelling as your main residence is sufficient to establish a dwelling as your main residence.

a) True

b) False





Main residence exemption: acquiring and changing

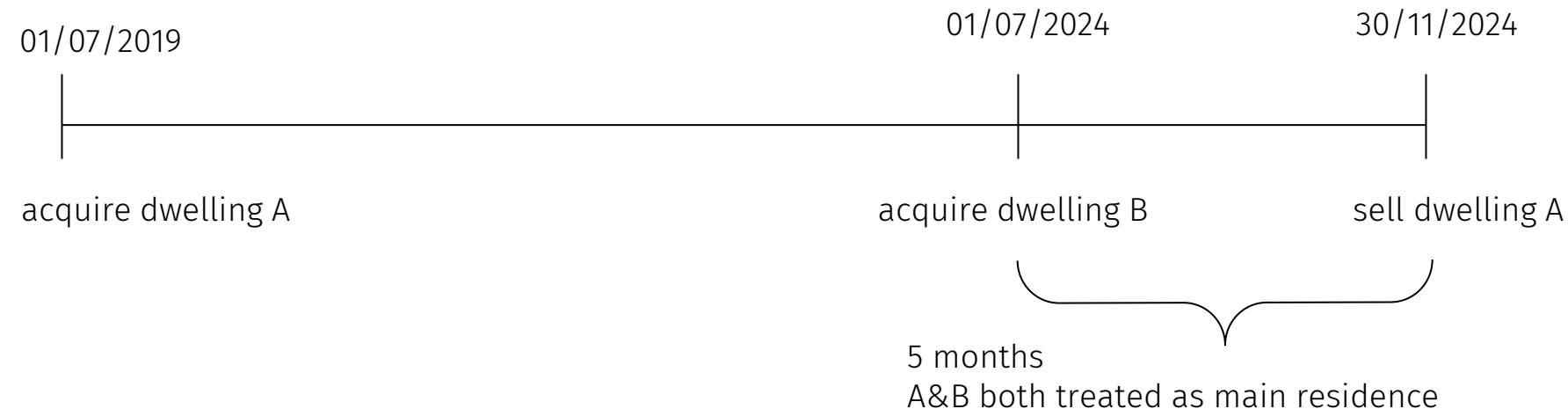
Main residence: acquiring a main residence

- Moving in:
 - need to establish a dwelling as your main residence as soon as practicable after acquiring
 - dwelling will be treated as your main residence from when acquired
 - ownership period starts on the settlement day of the purchase
 - does not extend to situation where dwelling rented



Main residence: changing main residences

- where you:
 - acquire a dwelling that is to become your main residence; and
 - still have an existing main residence
 - both dwellings are treated as your main residence for up to 6 months prior to sale of existing main residence [s 118-140]



Main residence: changing main residences

- Conditions for six months rule to apply:
 - existing main residence (A) was so for at least 3 continuous months in the 12 months before sale; and
 - existing main residence not used to produce assessable income during any part of the above 12 months when was not your main residence.



Main residence: absences

- To maintain exemption [s 118-145]:
 - must first establish as main residence
 - if ceases to be main residence - can choose to treat as main residence indefinitely
 - if used to produce income, limited to 6 years - can have another six years each time re-establish as main residence
 - if not used to produce income – indefinite absence period can apply
 - if make choice, cannot apply main residence exemption to any other dwelling during absence



Main residence: absences

Example

- James has lived in his Hobart home for 5 years
- His job is transferred to Darwin for 5 years
- He rents out his home during that time
- He sells Hobart home
- Chooses his Hobart home to continue as main residence during those 5 years
- Fully exempt from CGT



Main residence: build/repair/renovate – 4-year rule

- vacant land on which you build a dwelling can be treated as your main residence while vacant [s 118-150]
- also applies where residence unoccupied due to repairs or renovations
- 4-year limit:
 - have 4 years to make the dwelling your main residence; or
 - longer time allowed by Commissioner – discretion (e.g. builder bankrupt, taxpayer illness)
- must move in as soon as practicable
- must be your main residence for at least three months
- if make choice, no other dwelling can be treated as your main residence (except six month changeover rule)

Main residence: ‘as soon as practicable’

- becoming the main residence as soon as practicable after work has been finished is a question of fact
- factors to consider:
 - the date of certificate of occupancy (if applicable) is issued
 - the date final building inspection approval is given
 - the date the building becomes structurally complete
 - the connection of services e.g. electricity, gas



Main residence: build/repair/renovate – 4 year rule

Example

- Sam constructs a post-CGT dwelling intended to become her main residence.
- A Certificate of Occupancy issues on 1 December 2023 and Sam arranges for furniture and other belongings to be moved in the following day.
- However, due to bush fires, the removalists are unable to carry out their obligations on that date.
- Sam moves into the dwelling on the earliest possible date after the bush fires subside.
- In these circumstances, Sam is taken to have moved into the dwelling as soon as practicable after its erection or completion.



Main residence: build/repair/renovate – 4 year rule

Example

- Dave's dwelling is due for completion on 1 June 2023. On 1 May 2023, Dave decides to travel overseas for a period of 6 months. He departs on 15 May 2023.
- Although the dwelling is completed on 1 June 2023, Dave does not move into the dwelling until his return to Australia in November 2023.
- In these circumstances, an election to treat the land as his main residence from the date it was acquired cannot be made as the dwelling has not become Dave's main residence as soon as practicable after its erection or completion.



Main residence: interaction of absence, building & changing rules

- You can apply the ‘absence’, as well as ‘building & repairs’ rule in conjunction with ‘changing’ rule - can treat two dwellings as main residence for a period

Example

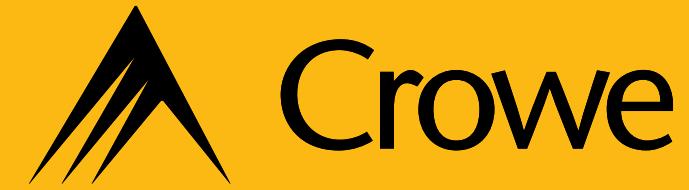
- John acquired first dwelling on 1 July 2005.
- Before he disposed of it on 1 December 2023, he acquired a vacant block of land on 1 March 2019 on which he erected a new dwelling (2nd dwelling).
- The 2nd dwelling was completed on 31 October 2023. He moved in on 1 December 2023 (which was as soon as was practicable to do so) and continues to live there.



Main residence: interaction of absence, building & changing rules

- John chose to treat the new dwelling as his main residence for the period 1 December 2019 to 30 November 2023*.
- This means John can treat his first dwelling as his main residence from 1 July 2005 to 30 November 2019 only;
- Additionally, as John owned two dwellings at the same time, he can apply both ‘building’ and ‘changing’ rules to treat both dwellings as his main residence for the 6 month period from 2 June 2023 to 1 December 2023;
- Means that John cannot treat his first dwelling as his main residence for the period 1 December 2019 to 1 June 2023.

* Time limit during which the building choice can operate. This limit is the shorter of 4 years before the new dwelling becomes your main residence or the period starting when you acquire your ownership interest in the land and ending when the dwelling becomes your main residence.



Main residence exemption: limitations

Main residence: limitation on the exemption

- Adjacent land sold separately [s 118-165]
 - sub-divide & sell back lot;
 - if merely sub-divide & continue to use both lots primarily for private purposes in association with the dwelling as main residence, then subsequent disposal of both lots together should qualify for exemption
 - if back lot sold separately, the disposal of the back lot is separate from dwelling which is the main residence, this will not qualify for exemption



Main residence: limitation on the exemption

- Spouses having different main residences [s 118-170]
 - choose only one residence;
 - entitled to exemption on nominated dwelling only;
 - capital gain on other dwelling not exempt
 - if pre and post-CGT property owned by wife and husband, wife occupies pre-CGT property, wife can nominate the post-CGT property as main residence



Main residence: limitation on the exemption

- Alternatively:
 - if husband & wife wish to nominate different dwellings as main residence, apportionment rules apply to both residences:
 - where husband & wife interest in respective dwellings chosen is 50% or less, dwelling taken to be main residence for whole period;
 - where interest in dwelling chosen is more than 50%, dwelling only regarded as main residence for half the period

Main residence: limitation on the exemption

Example

- Sean and Alice own a town house as tenants in common in equal shares;
- They also own a beach house as tenants in common, with Sean's interest being 30% and Alice's 70%;
- From 1 July 2013, Sean lives mainly in the town house and Alice lives mainly in the beach house. On 1 July 2024 they dispose of both dwellings
- For the period 1 July 2023 - 30 June 2024 Sean nominates the town house as his main residence and Alice nominates the beach house;
- The town house is taken to be Sean's main residence during the period. The beach house is taken to be Alice's main residence during half the period.

Main residence: limitations

Marriage breakdown

- residence acquired from company or trust where marriage breakdown rollover was available [s 118-180]
 - only applies if post-CGT for company/trust
 - your period of ownership deemed to start when company/trust acquired
 - cannot treat as main residence during company/trust's period of ownership
 - exemption apportioned



Main residence: limitations

Marriage breakdown

- property transferred from one spouse to the other on the breakdown of marriage
 - recipient spouse taken to have acquired ownership interest in dwelling when former spouse acquired it;
 - recipient spouse taken to have used dwelling in same manner as used by former spouse
- may operate beneficially – confer greater exemption
 - e.g. partial exemption if transferee spouse does not use dwelling as their main residence but transferor did; or
- may operate detrimentally – reduce exemption otherwise available
 - e.g. exemption reduced if transferor did not use dwelling as main residence but transferee does use as main residence



Main residence: partial exemption rules

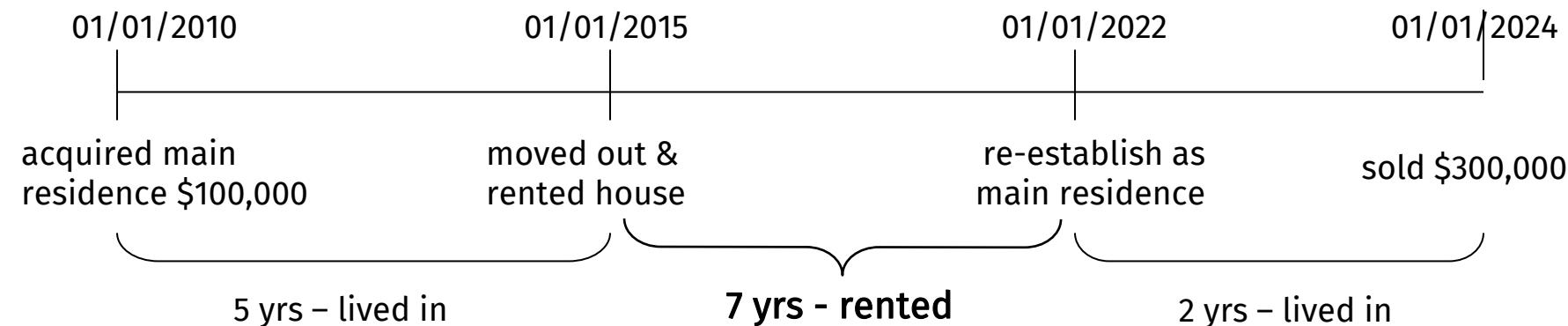
- main residence during only part of your ownership [s 118-185]
- full CGT exemption proportionately reduced by reference to period dwelling was not main residence
- this is done by apportioning gain or loss by non-main residence days / total days in ownership period



Main residence: partial exemption rules

Example

- Zak does the following:



- owned for 14 years & chooses to treat as main residence for first 6 of the 7 years rented out:
 - actual main residence for $5+2 = 7$ years
 - treated as main residence for 6 years
 - total 13 years
 - capital gain is $\$200,000 \times 1/14 = \$14,285$ - 50% discount will apply

Main residence: partial exemption rules

- used to produce assessable income [s 118-190]
- could have deducted some or all of interest, if borrowed money to acquire
- capital gain derived that is reasonable having regard to extent could deduct interest



Main residence: partial exemption rules

Example

- Let's now say:
 - Zak used $\frac{1}{4}$ of the house as a dental surgery for the last 2 years lived in:
 - additional capital gain of: $\$200,000 \times 2/14 \times \frac{1}{4} = \$7,143$
 - 50% discount will apply
 - no small business relief
 - active asset for less than half of the time owned - fail active asset test



Main residence: 1st used to produce assessable income

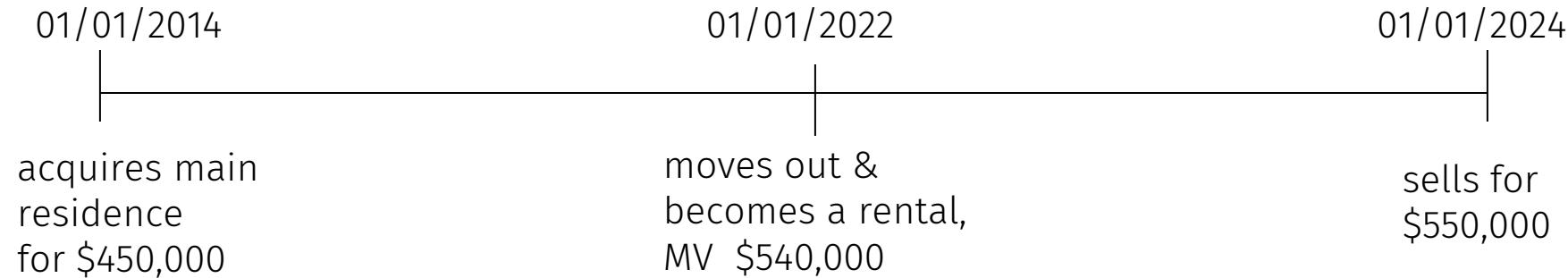
- main residence first used to produce assessable income *before 20 August 1996* [s 118-192]
 - capital gain/loss apportioned by days
- main residence first used to produce assessable income *after 20 August 1996*
 - taken to have been acquired at that time for market value, i.e. change in value while main residence is quarantined

Main residence:

1st used to produce assessable income after 20:08:96

Example

- Lee does the following:



- Lee is taken to have acquired the dwelling on 1 January 2022 for \$540,000 cost base - capital gain of \$550,000 - \$540,000 = \$10,000

Note:

- If elects to continue to treat as main residence, then exempt.

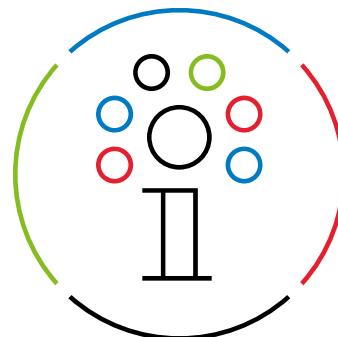


When is a dwelling used to produce assessable income?

- ATO views on when a dwelling is being used to produce assessable income:
 - part of dwelling used to derive rent income
 - part of dwelling used as a place of business
 - exclusively set aside
 - clearly identifiable
 - not readily/suitable adaptable for private/domestic use
- when not being used to produce assessable income
 - used as a mere home office

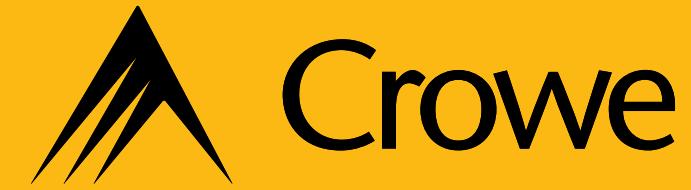


Poll Question #2



Under the main residence ‘partial exemption’ rules, when a dwelling has been your main residence during only part of your period of ownership, then the full exemption is proportionately reduced by reference the market value of the property at the relevant ownership dates.

- a) True
- b) False



Main residence: consequences of death

Main residence: death

General CGT rules [Division 128 ITAA 1997]:

- upon death, a person's assets transfer to the executor of their estate or beneficiary
- any capital gain or loss is disregarded
- where deceased's main residence was not used to produce assessable income at time of death:
 - beneficiary's cost base is market value at date of death (DoD)
 - deemed acquired on DoD



Dwellings acquired from deceased estate: where capital gain wholly disregarded

Inherit a dwelling [s 118-195]

- if deceased's dwelling was either:
 - pre-CGT; or
 - post-CGT, main residence at DoD and not used to produce income at DoD;
- capital gain/loss disregarded if:
 - sold within 2 years of DoD; or
 - it was the main residence from DoD until sold, of:
 - deceased's spouse (unless separated);
 - person with right to occupy under the Will; or
 - person who inherited the dwelling.
- exemption only applies to specified CGT events



Dwellings acquired from deceased estate: where capital gain wholly disregarded

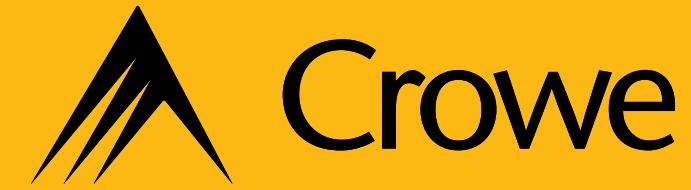
Inherit a dwelling [s 118-195]

- Discretion to extend period for disposal in PCG 2019/5
- ATO will allow a longer period where:
 - dwelling could not be sold and settled within two years of the deceased's death
 - due to reasons beyond your control that existed for a significant portion of the first two years
- PCG 2019/5 contains safe harbour approaches and conditions that must be satisfied to qualify
- Sets out circumstances that must have taken more than 12 months to address
- Identifies circumstances that must not have been material to the delay in disposal

Joint tenants

- joint tenants are taken to own property in equal shares
- surviving joint tenant(s) assume the interest of the deceased under property law
- deemed to have been inherited





**Main residence:
building on existing
block**

Build on existing block

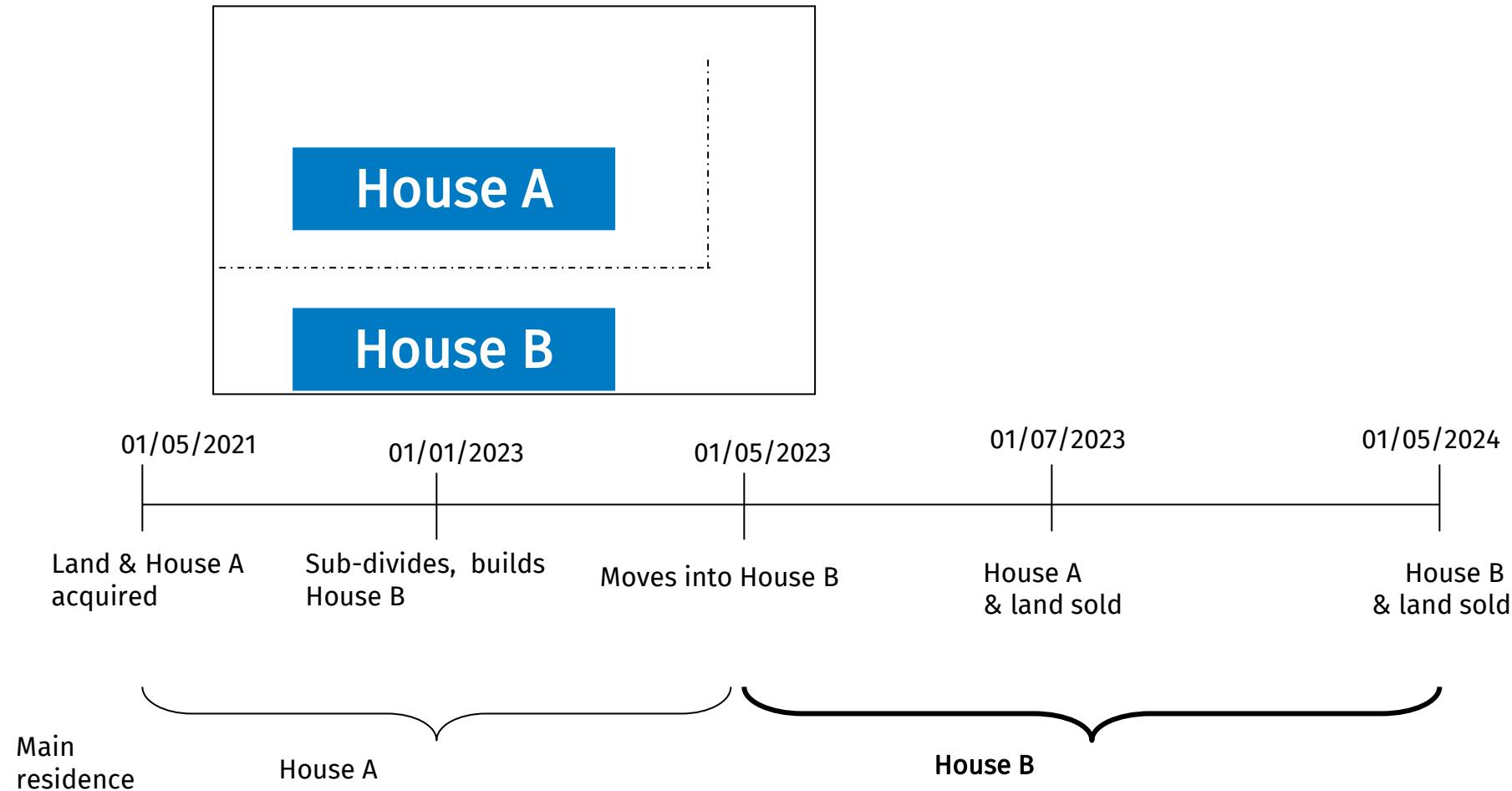
Example

- 1 May 2021: Ben purchased a large block of land with a house (House A) for \$600,000
- 1 January 2023 He sub-divides the land and builds a new home (House B) on the back for \$350,000.
- 1 May 2023: He moves in
- 1 July 2023: Original house and land sold for \$750,000
- 1 May 2024: Ben sells the new home for \$700,000



Build on existing block

Example



Build on existing block

Solution: House A

- Ben received advice that the \$600,000 can be allocated \$180,000 to the house and \$420,000 to the land (\$210,00 for each sub-divided part)
- House A was not his main residence between 1 May 2023 and its sale on 1 July 2023
- House A treated as his main residence from:
 - 1 May 2021 – 1 May 2023 (actual main residence);
 - 1 January 2023 – 1 July 2023 (6-month rule);
 - full exemption.



Build on existing block

Solution: House B

- cost is \$210,000 (land) + \$350,000 (house) = \$510,000
- capital gain: \$700,000 - \$510,000 = \$190,000
- ownership commenced 1 May 2021, sold 1 May 2024 (1,096 days)
- actual main residence: 1 May 2023 – 1 May 2024
- but can also treat as main residence for up to six (6) months prior to sale of House A, i.e. 1 January 2023 to 1 July 2023



Build on existing block

Solution: House B

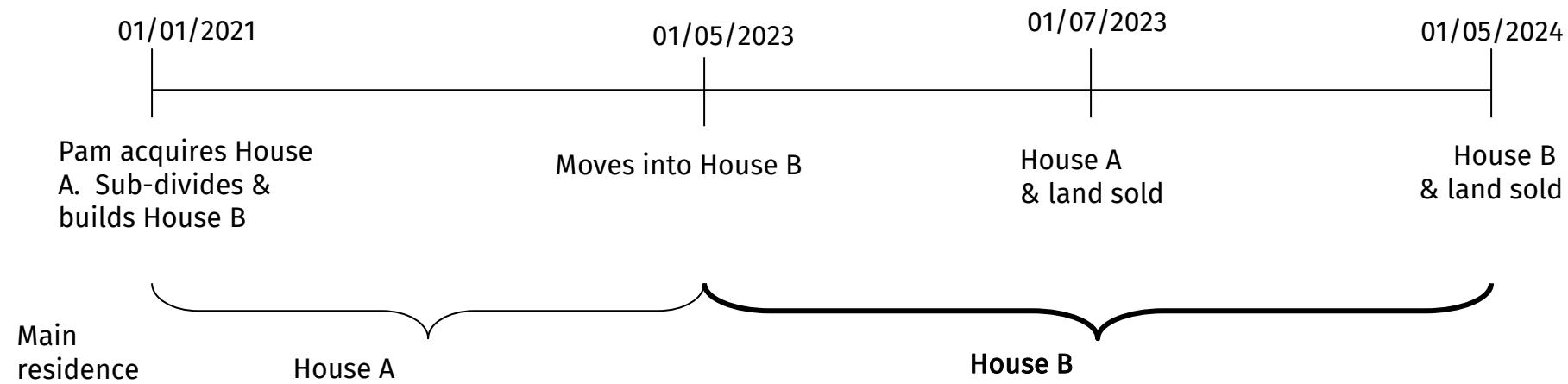
- treated as main residence for 1 January 2023 – 1 May 2024 (486 days)
- exempt capital gain:
$$486 / 1,096 \times \$190,000 = \$84,252$$
- capital gain of \$105,748
- CGT concession 50% discount will apply



Build on existing block

Can the exemption be better applied?

- Let's say:
 - for asset protection reasons, Ben transfers the property to his wife, Pam on 1 January 2021
 - property is then sub-divided and the same events take place



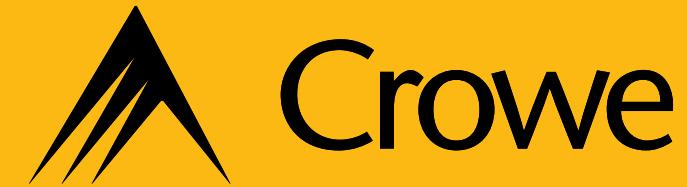
Build on existing block

- Ben applies main residence exemption on sale to Pam
- House A still treated as main residence for 6 months prior to sale - meaning access to full exemption
- House B
 - ownership period: 01/01/2023 – 01/05/2024 = 486 days
 - actual main residence: 01/05/2023 – 01/05/2024
 - treated as main residence: 01/01/2023 – 01/05/2024 i.e. 486 days
- exempt capital gain: $486/486 = 100\%$

Note:

- Duty cost on transfer.





Foreign tax residents

The 'granny flat' exemption

Downsizer Superannuation

Main residence exemption: foreign residents

- ability of foreign residents to access the MRE was removed, following the introduction of legislative provisions in December 2019
- rules applied *retrospectively* to CGT events happening on or after 7.30 pm (AEST) on 9 May 2017
- only affects foreign resident individual taxpayers (not residents or temporary residents)
- transitional rules allow access when dwelling held immediately before that time if:
 - they are a foreign resident at the time of the CGT event;
 - they held an ownership interest in the dwelling at all times from immediately before the announcement until immediately before the CGT event happens; and

Main residence exemption: foreign residents

- exemption does not apply to ‘excluded’ foreign residents
- an ‘excluded foreign resident’ is an individual who has been a foreign resident for a continuous period of more than 6 years
- exemption does not apply to a foreign resident who fails the “life events test”

CGT exemption for ‘granny flats’

- Division 137 ITAA 1997
- CGT exemption for granny flat arrangements where there is a formal written agreement in place
- CGT will not apply to creation, variation or termination of a formal written granny flat arrangement providing accommodation for older Australians or people with disabilities
- applies from 1 July 2021
- agreements must be entered into because of family relationship or other personal ties
- will **not** apply to commercial rental arrangements

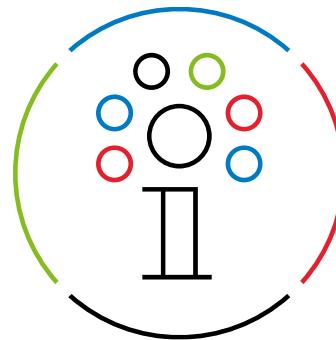


Downsizing to superannuation

- Individual 65 years or older can contribute an amount that is all or part of sale proceeds on disposal of a qualifying dwelling in Australia to superannuation
- 10-year ownership conditions applies
- Main Residence CGT exemption must apply to the disposal (partly or wholly)
- Maximum amount of contributions is \$300,000 or less and proceeds of sale and must be made within 90 days of disposing of the dwelling – Commissioner can extend
- Applies to sales entered on or after 1 July 2018 to 30 June 2022 – for over 65 years
- From 1 July 2022 to 31 December 2022 – for over 60 years
- From 1 January 2023 – 55 years and over



Key Takeaways from today's session



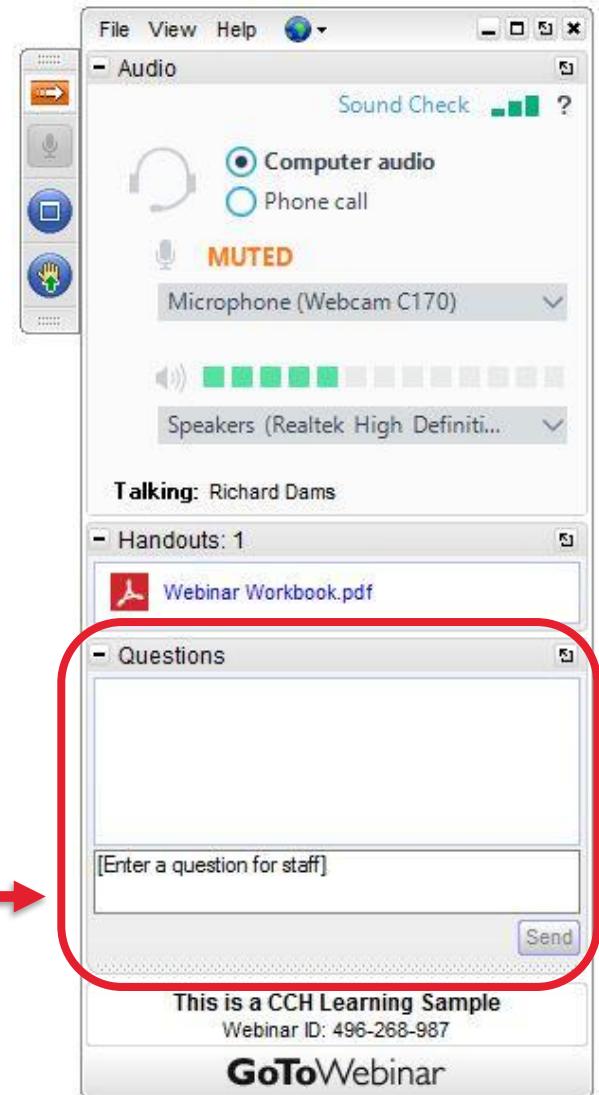
- Main residence exemption is highly complex
- Important to obtain a clear understanding of the usage of the residence
- Adjacent land does not need to be on the same title – look at the way in which adjacent land is used
- The partial exemption rules are complicated – don't underestimate the time it takes to resolve your client's issues

Questions?

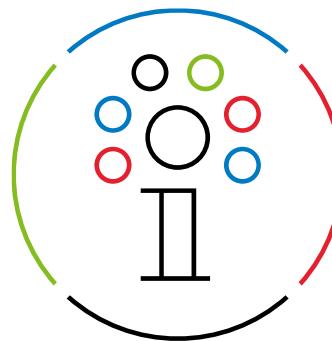


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Questions?



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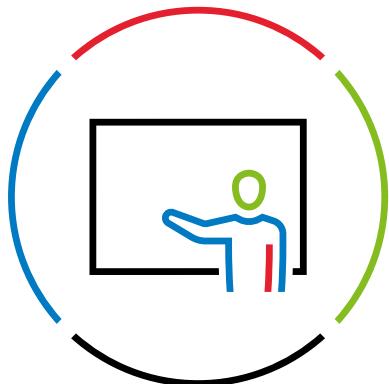
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