The main residence exemption

MODULE 3 | 3.4.4 | STUDENT COMPANION

There is no capital gain or loss when a CGT event happens to a dwelling that is your main residence for the whole of your ownership. The exemption shrinks if the home was your main residence for only part of that time, or produced income. Special rules cover changing homes, absences, spouses, homes rented after you lived in them, foreign residents and granny flats.

The basic exemption

Why it exists. A home is somewhere to live before it is an investment. Subdivision 118-B of ITAA97 (s 118-110) disregards a gain or loss on your main residence.

Two tests. It must be a dwelling (including the land under it and up to 2 hectares of adjacent private land) and it must be your main residence, a question of fact.

Two tests for the main residence exemption

What is a dwelling?

s 118-115, s 118-120

- A unit of residential accommodation
- Includes a building, caravan, houseboat or other mobile home
- Includes the land under it
- Plus adjacent land used for private and domestic purposes: **up to 2 hectares**
- Bigger block? The owner selects which 2 hectares are covered

Is it your main residence?

No definition: ordinary meaning, a question of fact

1. How long you have lived there
2. Where your family lives
3. Whether your belongings have moved in
4. Where your mail is delivered
5. Your address on the electoral roll
6. Telephone, gas and electricity connected
7. Your intention in occupying the place
8. There by choice, or by obligation?

No single pointer settles it: they are weighed together.

Full or partial

Full exemption. Main residence for the whole ownership period, and never used to produce assessable income.

One at a time. If two dwellings qualify, you choose one, in the income year of the CGT event.

When life is not tidy - three special rules

Changing homes
s 118-140

- **Own both?** Both are your main residence for the last 6 months before the old home goes, or the actual overlap if shorter.
- **Conditions:** the old home was your main residence for at least 3 continuous months of its last 12, and earned no income in those 12 months.

Absences
s 118-145

- **Choose** to keep treating the old home as your main residence after you move out.
- **Not producing income:** indefinitely. **Rented:** up to 6 years, restarting each time you move back in and leave again.
- **Price:** no other dwelling can be your main residence for that period.

Hermione Ormsby: 3 years in her house, 4 years renting it out while she rents a flat, then back and sells. 4 years is within 6, so the whole gain is disregarded.

Spouses with different homes
s 118-170

- **Choose one dwelling** for both, or nominate one each.
- **One each:** your share of your nominated home is 50% or less: main residence for the whole period.
- **Your share is more than 50%:** main residence for only half of the period.

Partial exemption - the day count (s 118-185)

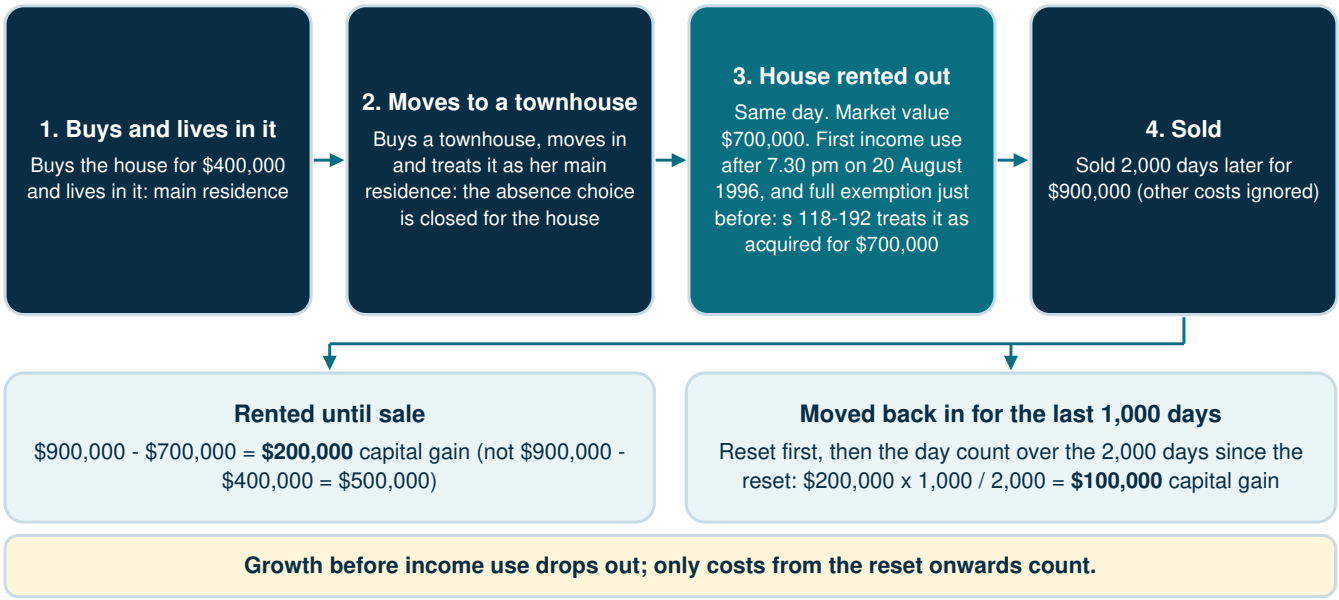
Capital gain or loss x non-main residence days / days in your ownership period.

Example. Alasdair Varley rents his unit out for 1,000 days, then lives in it for 3,000 days. Gain $200,000 x 1,000 / 4,000 = $50,000 taxable; $150,000 exempt.

Home first, tenants later (s 118-192)

Applies where you would have had a full exemption just before you first used the dwelling to produce income, and that first use was on or after 7.30 pm on 20 August 1996. You are treated as acquiring the dwelling at its market value at that moment. If it later becomes your main residence again (and the absence choice is not available), s 118-192 applies first and s 118-185 then counts days from the reset.

Home first, tenants later - Honora Galbraith's house



Foreign residents

- A foreign resident at the time of the CGT event gets no main residence exemption, full or partial, even for years lived in the home as a resident.
- **Exception:** foreign resident for 6 years or less, and a specified life event in that time (for example, a terminal medical condition of you or your spouse).
- **Withholding:** when a foreign resident sells Australian real property, the buyer pays part of the price to the ATO and the seller claims a credit. For contracts entered into before 1 January 2025 the rate is 12.5% and applies only to property worth $750,000 or more; for contracts from 1 January 2025 the rate is 15% and there is no threshold.

Granny flat arrangements (Subdivision 137-A)

Since 1 July 2021, granting a granny flat right (which would otherwise be CGT event D1) is exempt if:

- there is a formal written agreement arising from a family arrangement or other personal tie, not a commercial rental
- it creates, varies or ends a granny flat arrangement
- the arrangement houses an older person or a person with a disability who is an Australian resident.

Example. Ephraim Pembury, 81, pays his niece a lump sum under a written agreement for a life right to live in the flat behind her house. No capital gain for the niece.

Key figures for 2024-25

Item	Figure
Adjacent land covered	Up to 2 hectares
Changing homes overlap	Up to 6 months (or the actual overlap, if shorter)
Changing homes condition	Main residence 3 continuous months of the last 12; no income in those 12 months
Absence, no income	Indefinite
Absence, rented	Up to 6 years each absence
Market value rule start	First income use on or after 7.30 pm, 20 August 1996
Foreign resident exception	Foreign resident 6 years or less, plus a life event
Withholding	12.5%, property $750,000 or more (contracts before 1 January 2025); 15%, no threshold (contracts from 1 January 2025)
Granny flat exemption	From 1 July 2021

Practice questions

MODULE 3 | 3.4.4 | TRY THESE BEFORE THE WORKED ANSWERS

Question 1 - Full, partial or lost?

For each situation, decide whether the main residence exemption is full, partial or lost, and name the rule that decides it. Ignore any CGT discount.

Situation	Full, partial or lost?	Rule that decides it
(a) Wynstan Kittredge sells the house he has lived in, and never rented out, for the whole time he owned it. It stands on a block of 1.5 hectares that he used as a garden and orchard.		
(b) Dunstan Sedgwick buys a new home and moves in. He sells his old home 4 months later. He lived in the old home for the 12 months before he moved out and never rented it out.		
(c) Wenonah Dallimore moves out of her house to take a 3-year job in another town, where she boards with a friend. Her house stays empty. She claims no other home, moves back in, and later sells it.		
(d) Rainsford Ferrier lived in his Perth house for many years, then moved to Canada. Nine years later, still living in Canada and a foreign resident, he sells the house. No life event has happened.		
(e) Mortimer Linwood lives in his house, then buys an apartment, moves in and treats the apartment as his main residence. He rents the house out for 4 years and then sells it.		
(f) Vaughn Cartwright lives on a 3-hectare property for the whole time he owns it, never earning income from it. He sells the whole property.		

Question 2 - Tenants first

Thaddea Gilchrist buys a unit and rents it to tenants for 1,200 days. She then moves in and lives in it as her main residence for 2,800 days before selling it. She owned no other home in that time.

Item	Amount
Purchase price	$450,000
Stamp duty on purchase	$18,000
Sale price	$780,000
Real estate agent's fees on sale	$12,000

Calculate Thaddea's capital gain before any CGT discount, and the amount that is exempt.

Question 3 - Home first, tenants later

Teodora Wexley buys a house for $380,000, paying $15,000 in stamp duty, and lives in it as her main residence. Several years later (well after 1996) she buys an apartment, moves in and treats the apartment as her main residence from that day. On the same day she rents the house to tenants; the house is then worth $620,000. Exactly 1,500 days later she sells the house for $860,000 and pays agent's fees of $18,000. (a) Calculate Teodora's capital gain on the house before any CGT discount. (b) Recalculate it if, instead, she had sold the apartment and moved back into the house for the last 500 of those 1,500 days, so that the house was rented for 1,000 days and her main residence for 500 days.

Worked answers

MODULE 3 | 3.4.4 | WORKED ANSWERS - ATTEMPT THE QUESTIONS FIRST

Question 1 - Full, partial or lost?

Situation	Result	Why
(a) Wynstan, 1.5 hectares	Full	The basic exemption (s 118-110) covers the dwelling and adjacent land used for private and domestic purposes up to 2 hectares (s 118-120). 1.5 hectares is within the limit, and it was his main residence for the whole ownership period with no income use.
(b) Dunstan, 4-month overlap	Full, for both homes	The changing homes rule (s 118-140) treats both dwellings as his main residence for the shorter of 6 months and the actual overlap. The overlap is 4 months, so it is covered. The conditions are met: the old home was his main residence for at least 3 continuous months of its last 12 and earned no income in those 12 months.
(c) Wenonah, 3-year job	Full	The absence rule (s 118-145) lets her choose to keep treating the house as her main residence. It produced no income, so the choice can last indefinitely, and the 3 years are covered. She claimed no other home, so the choice is available.
(d) Rainsford, foreign resident	Lost	He is a foreign resident when the CGT event happens, so neither the full nor the partial exemption is available, even for the years he lived there as a resident. The exception does not help: he has been a foreign resident for more than 6 years and no life event has happened.
(e) Mortimer, house rented 4 years	Partial	The absence rule cannot cover the rental years because he claims the apartment as his main residence for the same period. The house was fully exempt just before it was first rented, so s 118-192 treats him as acquiring it at its market value on that day. The whole gain from that value to the sale price is taxable (all days after the reset are non-main residence days); the growth before the rental is exempt.
(f) Vaughn, 3 hectares	Partial	The exemption covers the dwelling and only 2 hectares of adjacent land (s 118-120). Vaughn selects which 2 hectares are covered; the gain on the remaining 1 hectare is not exempt.

Question 2 - Thaddea's capital gain

Thaddea's capital gain is **$90,000** (before any CGT discount).

Step	Working
Which rule?	Thaddea did not live in the unit before renting it, so it was not her main residence before the income use and s 118-192 does not apply. Use the s 118-185 day count.
Cost base	$450,000 + $18,000 + $12,000 = $480,000
Capital gain before exemption	$780,000 - $480,000 = $300,000
Days	Ownership period = 1,200 + 2,800 = 4,000 days; non-main residence days = 1,200
Taxable capital gain	$300,000 x 1,200 / 4,000 = $300,000 x 30% = **$90,000**
Exempt	$300,000 - $90,000 = **$210,000**

Question 3 - Teodora's house

The absence choice is not available because Teodora treats the apartment as her main residence while the house is rented. The changing homes rule does not help either, because the house earned income in its last 12 months. The house was fully exempt just before it was first rented, after 7.30 pm on 20 August 1996, so s 118-192 applies. The original price and stamp duty drop out.

Step	(a) Rented until sale	(b) Moved back in
Rule	s 118-192 applies: treated as acquired for $620,000 on the day the rental began	s 118-192 applies first, then s 118-185
Cost base	$620,000 + $18,000 agent's fees = $638,000	$638,000 (unchanged)
Capital gain	$860,000 - $638,000 = $222,000	$222,000
Day count	All 1,500 days are non-main residence days: 1,500 / 1,500	Non-main residence days = 1,000 of 1,500
Taxable gain	**$222,000**	$222,000 x 1,000 / 1,500 = **$148,000**
Exempt	Nil	$222,000 - $148,000 = $74,000

Compare: without the reset, the gain would be $860,000 - $380,000 - $15,000 - $18,000 = $447,000.