

TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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220 | AirBnB triggers CGT

Doing AirBnb triggers CGT when you sell your home.

AirBnB Triggers CGT

Does listing your home on AirBnB affect your main residence exemption? And of course booking.com and other sharing platforms? This is the question we asked Andrew Henshaw of [Velocity Legal](#) in Sydney.

Here is what we learned but please listen in as Andrew Henshaw explains all this much better than we ever could.

To listen while you drive, walk or work, just access the episode through a free podcast app on your mobile phone.

A – Legal Framework

Main Residence Exemption

Your home is exempt from CGT thanks to the main residence exemption in section 118-110 ITAA 97. There it says that a capital gain or loss is disregarded where an individual owns the dwelling and it is their main residence.

Capital gain or capital loss you make from a CGT event that happens in relation to a CGT asset that is a dwelling ...is disregarded if:

- (a) you are an individual;*
- (b) the dwelling was your main residence throughout your ownership period; and*
- (c) it did not pass via a deceased estate.*

Individual

You must own the property as an individual to qualify for the exemption. The main residence exemption does not apply to property held by a discretionary trust or company.

Dwelling

The emphasis is on dwelling. Dwelling is defined in section 118-115):

- (a) Unit of accommodation that is a building or is contained in a building, and consists wholly or mainly of residential accommodation;*
- (b) Any land immediately under the unit of accommodation;*
- (c) A dwelling does not include land adjacent to a building (other than under section 118-120)*
- (d) Land adjacent is included if it is used primarily for private or domestic purposes in association with the dwelling. And less than two hectares;*

So if you demolish the house and then sell the land: No exemption. This is why a developer project is never sold as vacant land. It is always with the derelict house still on it.

If you demolish the house, build a new house and never live in the house: No exemption. There is an exemption for accidental destruction (s118-160), as long as the destruction was not deliberate.

If you sell part of land that does not include the dwelling, the main residence exemption doesn't apply either.

Two Properties

In some circumstances it is possible to sell two properties and claim the main residence on both. Taxation Determination TD 1999/69 considers the situation where more than one unit of accommodation can constitute a dwelling for the purposes of the main residence exemption.

TD 1999/69 states that whether two or more units of accommodation are used together as one place of residence, for the purposes of the term dwelling as defined in section 118-115 of the ITAA 1997, is a question of fact that depends on the particular circumstances of each case.

Indefinite-Absence Rule

If the dwelling ceases to be your main residence, you can still choose to continue to treat it as your main residence (section 118-145). And as long as you don't rent it out, you can treat it indefinitely as your main residence. But you can only have one main residence.

6-Year-Absence Rule

If you use the part of the *dwelling that was your main residence for the *purpose of producing assessable income, the maximum period that you can treat it as your main residence is 6 years. You are entitled to another maximum period of 6 years each time the dwelling again becomes and ceases to be your main residence.

Example

You live in a house for 3 years, move overseas for 5 years. Renting out your home and then move back. After 2 years, you are posted overseas again for 4 years (again renting it out), at the end of which you sell the house.

You have not treated any other dwelling as your main residence during your absences. And so you may choose to continue to treat the house as your main residence during both absences because each absence is less than 6 years.

You don't have to make this choice straight away. You can decide when preparing your income tax return for the income year in which you sold the house.

Destination Irrelevant

For the indefinite absence and 6-year absence rules to apply, it doesn't matter where you move to. You could move to the house next door and still apply these rules. Most examples you see assume a posting overseas, but the absence rules can also apply when you move interstate or within the same state or city or street.

B – AirBnb Triggers CGT

When does doing AirBnB start eating into your main residence exemption? Right from Day 1.

The day you publish your property as available for rent on AirBnb is the day you start losing your exemption – not all at once – just bit by bit each day.

Partial Exemption

Using part of your main residence to produce assessable income will reduce your full exemption to a partial exemption thanks to Section 118-190:

(1) You only get a partial exemption for a CGT event that happens in relation to a dwelling ...if:...

(b) the dwelling was used for the purpose of producing assessable income during all or a part of that period; and

(c) if you had incurred interest on money borrowed to acquire the dwelling...you could have deducted some or all of that interest

Short Term Rentals

In a short term rental the main residence continues to be your main residence. And this is why the indefinite absence or 6-year absence rules don't apply.

As a result, the sale of any property used for AirbnB (or listed on AirbnB / Stayz etc) will generally not be 100% tax free.

The ATO has access to AirBnB property data and is likely to do data matching.

So this is a short overview of how AirBnB triggers CGT, but please listen to this episode since Andrew Henshaw goes into a lot more detail.

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