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BUYING A NEW HOME BEFORE SELLING THE OLD ONE: THE INS & OUTS

Sometimes an individual or couple decide to buy a new home before selling their existing one. In such cases, a concession exists that allows for both houses to be treated as a main residence for up to six months – but only if certain conditions are met.

Section 118-140 of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that both the old and new dwellings can be treated as the taxpayer's main residence for the lesser of:

- The six-month period immediately before the sale of the existing home, or
- The period between the purchase of the new home and the sale of the existing home.

So if it takes a taxpayer *less* than six months to settle on the sale of their original home after having settled on the sale of their new home, then both homes can be treated as the taxpayer's main residence during this period.

On the other hand, if *more* than six months passes between the settlement of the new home and the (later) settlement of the original home, both dwellings will only be treated as a main residence for a maximum period of six months before the settlement on the original home.

In the latter instance, a partial CGT exemption will apply during the excess period (i.e. after the maximum six months) to either the original or new home. Which of them it is will depend on which did not qualify as the taxpayer's main residence.

Other than the fundamental requirement that the new home must become the taxpayer's main residence, the other two key requirements that must be met for the concession to apply are:

- The existing home must have been the taxpayer's main residence for at least 3 of the 12 months before the taxpayer's "ownership interest" in it ends, and
- The existing home must not have been used to produce assessable income in any part of that 12-month period when it was not the taxpayer's main residence.

That said, an absence concession exists that can be used to allow the original home to qualify as a main residence — including where it may have been rented in that 12-month period. This is because the effect of the absence concession is to continue to "treat" the original home as the taxpayer's main residence — notwithstanding any absence and any income use in this period.

The example scenario below featuring 'Anne' illustrates how the "absence concession" can work in conjunction with the "changing main residence concession".

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Example scenario

Anne acquired a dwelling on 1 January 2008 where she lived until she went overseas on 1 January 2019. Anne did not rent the home during her absence.

She acquired another dwelling on 1 February 2020 and moved into that dwelling on her return from overseas on 1 March 2020. Anne disposed of the first dwelling on 1 August 2020.

The law recognises that Anne continued to treat the first dwelling as her main residence for the period 1 January 2019 until she disposed of it on 1 August 2020.

In fact, from 1 February 2020 Anne would have been able to treat both dwellings as her main residence for up to six months, ending when she ceased to have an ownership interest in the first dwelling.

Note that that purchased vacant land or land with a partly constructed building on it can also be treated as the taxpayer's new home for the purposes of the concession.

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