

Q *I am moving back to Australia soon and intend on living in my property before I sell it, how long do I have to live in it so that it becomes tax free?*

A Under Australian Capital Gains Tax rules, the family home (referred to as the Principal Place of Residence) is free of Capital Gains Tax.

It is a common misconception that if you have a property that was not your residence and had been rented out, that if you move into it for a period it can become tax free under the PPR rules.

This is completely not true, regardless of how long you may actually live in the property in later years. Instead, the tax free status is allowed on a pro rata basis, so for the period of time it was actually your home that portion is tax free but the rented period remains taxable regardless.

For example if you own a property and rent it out for 4 years then move back in for 1 year prior to selling, only 1/5th of any gain would be tax free while the remainder would be taxable. Importantly you would still be entitled to the normal half tax free allowance on the taxable portion once I have owned the property for more than 12 months, which in this case had occurred.

There is no minimum time to what constitutes living in the property, however you should genuinely have it as your home and this would be evidenced by such things as electrical accounts, removalists invoices, licence address and electoral roll address.

There may be some further concessions available to this rule is if you had lived in the property prior to moving abroad or renting it out, in which case there are some special rules that treat the property as if it has remained your home for up to six years, even though it was actually rented during this period.

In these situations, you are meant to obtain a valuation when you originally moved out, and that valuation amount

becomes your new cost base for tax purposes. Therefore any capital gains from the original purchase price up to the new valuation will remain tax free.

If the property is sold within the six years then no tax is applicable.

If sold after the six years after moving out, then it will be pro rata from the time of leaving to time of sale. This may be minor, so you should not sell just to protect against potential tax issues.

Importantly, you must have actually lived in the property while being a resident for Australian tax purposes, so you can't nominate the property as your home unless you had physically lived in it.

If you move back in to the property then it will increase the pro rata tax free period even further.

Notwithstanding that there may be tax issues that may not be welcomed there are many ways to protect against the Capital Gains Tax through sensible planning while living abroad including further acquisition and debt management.

You should not be afraid of the effect of Capital Gains Tax as rates of tax in Australia have reduced significantly over the recent past so even the full tax cost may be far less than you thought it might be, but obviously if you can legally reduce the potential cost, then this should be investigated and considered.

Steve Douglas is the co-founder and Managing Director of Australasian Taxation Services (ATS), established in Singapore in 1995. ATS provides specialist taxation services to people of any nationality investing in Australian property, as well as Australian expatriates living overseas. Areas of specialisation include the Australian taxation aspects of property investment, as well as expatriate and migration planning.