



Taxation Determination

Income tax: capital gains: can intangible capital improvements made to a pre-CGT asset be a separate asset for the purpose of subsections 108-70(2) or (3) of the *Income Tax Assessment Act 1997* (ITAA 1997)¹?

📌 This publication provides you with the following level of protection:

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. Yes. For the purposes of subsections 108-70(2) or (3), intangible capital improvements can be a separate CGT asset from the pre-CGT asset to which those improvements are made if the relevant thresholds are satisfied.

Example

2. *A farmer, holding pre-CGT land, obtains council approval to rezone and subdivide the land. Those improvements may be separate CGT assets from the land.*

¹ All legislative references are to the *Income Tax Assessment Act 1997* (ITAA 1997).

Date of effect

3. This Determination applies to years of income commencing both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Commissioner of Taxation

25 January 2017

Appendix 1 – Explanation

ⓘ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

4. Subdivision 108-D contains rules that treat certain buildings, structures and other capital improvements as separate CGT assets from the asset to which they are affixed or made.
5. Subsection 108-70(2) deems a capital improvement (that is not related to another capital improvement) to be a separate CGT asset if the following conditions are met:
 - (a) the improvement is to a pre-CGT asset
 - (b) the improvement's cost base is more than the improvement threshold² for the income year in which the CGT event happened to the original asset, and
 - (c) the improvement's cost base is more than 5% of the capital proceeds from the event.
6. Subsection 108-70(3) operates similarly in relation to 'related' capital improvements; except that all such improvements are taken to be one, separate CGT asset. Section 108-80 outlines factors to be considered in deciding whether capital improvements are related.
7. There is nothing in either provision which confines their operation to tangible capital improvements.

² See section 108-85 for the meaning of improvement threshold.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2000/1; TR 2006/10

Previous Rulings/Determinations:

TD 5

Legislative references:

- ITAA 1997
- ITAA 1997 Subdiv 108-D
- ITAA 1997 108-70(2)
- ITAA 1997 108-70 (3)
- ITAA 1997 108-80
- ITAA 1997 108-85

ATO references

NO: 1-A61P118

ISSN: 2205-6211

BSL: PGH

ATOlaw topic: *Capital gains tax – CGT assets – Separate CGT assets*

**© AUSTRALIAN TAXATION OFFICE FOR THE
COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).