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)?

**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.

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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 threshold\(^2\) 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.

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\(^2\) 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
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