


TD 95/D6 - Income tax: capital gains: does the expression 'an improvement of a capital nature' in subsection 160P(6) of the Income Tax Assessment Act 1936 contemplate aggregating separate improvements to determine whether the threshold and ratio tests of the subsection are met?

 This cover sheet is provided for information only. It does not form part of *TD 95/D6 - Income tax: capital gains: does the expression 'an improvement of a capital nature' in subsection 160P(6) of the Income Tax Assessment Act 1936 contemplate aggregating separate improvements to determine whether the threshold and ratio tests of the subsection are met?*

This document has been finalised by TD 95/58.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: capital gains: does the expression 'an improvement of a capital nature' in subsection 160P(6) of the *Income Tax Assessment Act 1936* contemplate aggregating separate improvements to determine whether the threshold and ratio tests of the subsection are met?

1. Yes, where there is a single improvement. We consider that there is one single improvement that is deemed to be one separate asset for the purposes of subsection 160P(6) in each of the following situations:

- (a) where there are separate related improvements (whether or not they are made under one overall project or plan of improvement) undertaken within a reasonable period, even if they are done in stages rather than in a single operation; or where
- (b) a number of improvements are made within a reasonable period under one overall project or plan of improvement (especially if they are undertaken in a single operation - but even if they are done in stages);

provided that, on their completion, the improvements in both situations (a) and (b) are either:

- (c) of the same broad class or kind; or
- (d) combined, integrated, associated, linked or dependent (physically or functionally); and

the improvements are not discrete or self-contained (physically or functionally) from each other.

2. Aggregation is not appropriate if:

- (a) a number of improvements are made to an underlying asset, but not under one overall project or plan of improvement; and
- (b) each improvement is separate and distinct from, and unrelated to, any other improvement in the sense that it is a discrete or self-contained improvement physically or functionally independent from any other improvement;

(see *Case 38/94* 94 ATC 343; *AAT Case 9671* 28 ATR 1299).

3. To a large extent, it is a matter of impression and degree whether improvements should be aggregated for the purposes of subsection 160P(6). Relevant factors might be expected to include:

- the nature of the underlying asset involved;
- the period of time over which the works of improvement are done;
- whether the work is carried out in accordance with one overall project or plan; and
- the nature, location, size, value, quality, composition and utility of each improvement and the extent to which it relates (physically or functionally) to each other improvement.

4. This Taxation Determination replaces Taxation Determination TD 6, which (when this draft Taxation Determination becomes final) will be withdrawn.

Date of effect: *This Determination reflects a change in our interpretation from that in TD 6. Our new interpretation applies only to improvements made after the date of this Determination (in its final form) unless the taxpayer wishes it also to apply to improvements made on or before that date. For this purpose, an improvement is 'made' when the taxpayer enters into a legally binding contract for the improvement to be made. If there is no legally binding contract, the improvement is 'made' when work on the improvement begins. This Determination does not withdraw any more favourable legally binding private ruling in relation to an income year that has already commenced (see Taxation Determination TD 93/34).*

Technical Note: *If a taxpayer makes more than one improvement to an underlying asset, each improvement is considered separately to determine whether the indexed cost base threshold (in subparagraph 160P(6)(c)(ii)) and the 5% disposal consideration test (in subparagraph 160P(6)(d)) are exceeded or whether the indexed cost bases of all, or some, of the improvements are aggregated in determining whether the threshold and ratio tests are exceeded.*

Commissioner of Taxation

22/6/95

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