



***TD 95/58 - Income tax: capital gains: in determining whether the threshold and ratio tests in subsection 160P(6) of the Income Tax Assessment Act 1936 are met, in what circumstances is it appropriate to aggregate a number of enhancements made to an asset so as to constitute an 'improvement' to the asset?***

 This cover sheet is provided for information only. It does not form part of *TD 95/58 - Income tax: capital gains: in determining whether the threshold and ratio tests in subsection 160P(6) of the Income Tax Assessment Act 1936 are met, in what circumstances is it appropriate to aggregate a number of enhancements made to an asset so as to constitute an 'improvement' to the asset?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 22 November 1995

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Taxation Determination

**Income tax: capital gains: in determining whether the threshold and ratio tests in subsection 160P(6) of the *Income Tax Assessment Act 1936* are met, in what circumstances is it appropriate to aggregate a number of enhancements made to an asset so as to constitute an 'improvement' to the asset?**

1. Aggregation is appropriate if the enhancements are related to one another: cf *Case 38/94* 94 ATC 343; *AAT Case 9671* 28 ATR 1299.

2. Whether enhancements are related to each other is, to a large extent, a matter of impression and degree. Relevant factors to consider include:

- (a) the nature of the asset to which the enhancements are made; and
- (b) the nature, location, size, value, quality, composition and utility of each enhancement and the extent to which it depends (physically or functionally) on another enhancement; and
- (c) whether an enhancement depends, in an economic, commercial or practical sense, on another enhancement e.g. a series of enhancements are made:
  - (i) in a single operation rather than in stages; or
  - (ii) in accordance with one overall project of improvement rather than individually; and
- (d) whether the enhancements are of the same class or kind; and
- (e) whether the enhancements are made within a reasonable time of each other.

3. Aggregation is not appropriate if both of the following criteria are met:
- (a) a number of enhancements are made to an asset; and
  - (b) each enhancement is separate and distinct from any other enhancement in the sense that it is discrete, self-contained or independent (physically or functionally) from the other enhancement and is otherwise unrelated to the other enhancement.
4. This Determination replaces Taxation Determination TD 6, which is now withdrawn.

**Date of effect:** This Determination reflects a change in our interpretation from that in Taxation Determination TD 6. Our new interpretation applies only to enhancements made after the date of this Determination unless the taxpayer wishes it also to apply to enhancements made on or before that date.

For this purpose, an enhancement is 'made' when the taxpayer enters into a legally binding contract for the enhancement to be made. If there is no legally binding contract, the enhancement is 'made' when work on the enhancement begins.

This Determination does not withdraw any more favourable legally binding private ruling for an income year that has already commenced (see Taxation Determination TD 93/34).

**Technical note:** The issue considered in this Determination is whether, if a taxpayer makes more than one enhancement to an asset, each enhancement is regarded separately as an 'improvement' for the purpose of determining 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 enhancements are aggregated to constitute an 'improvement' in determining whether the threshold and ratio tests are exceeded.

## Commissioner of Taxation

22/11/95

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Related Determinations: TD 93/34

Related Rulings:

Subject Ref: aggregating enhancements; improvement; separate assets

Legislative Ref: ITAA 160P(6); ITAA 160P(6)(c)(ii); ITAA 160P(6)(d)

Case Ref: Case 38/94 94 ATC 343; AAT Case 9671 28 ATR 1299

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