


TD 96/18A1 - Income tax: capital gains: if after 19 September 1985 a person makes a capital improvement to a pre-CGT asset, does subsection 160P(6) of the Income Tax Assessment Act 1936 deem the improvement to be a separate asset on the person's death or on any later disposal by the legal personal representative (LPR) or a beneficiary?

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Addendum

Taxation Determination

Income tax: capital gains: if after 19 September 1985 a person makes a capital improvement to a pre-CGT asset, does subsection 160P(6) of the *Income Tax Assessment Act 1936* deem the improvement to be a separate asset on the person's death or on any later disposal by the legal personal representative (LPR) or a beneficiary?

This Addendum amends Taxation Determination TD 96/18 to reflect the rewritten capital gains tax provisions in Part 3-1 of the *Income Tax Assessment Act 1997*.

TD 96/18 is amended as follows:

1. Title

- (a) Omit 'subsection 160P(6) of the *Income Tax Assessment Act 1936*'; substitute 'subsection 108-70(2) of the *Income Tax Assessment Act 1997*'.
- (b) Omit 'separate asset'; substitute 'separate CGT asset'.

2. Paragraph 1

Omit the paragraph; substitute:

- 1. No. Under subsection 108-70(2) of the *Income Tax Assessment Act 1997* (ITAA 1997)¹ the improvement is not a separate CGT asset because that provision does not apply to a CGT event that happens because of a person's death.

¹ All legislative references in this Determination are to the ITAA 1997 unless indicated otherwise.

3. Paragraph 2

Omit the paragraph; substitute:

2. Subsection 108-70(2) does not apply if the asset is later disposed of by the LPR or a beneficiary. Subsection 108-70(2) is concerned with post-CGT improvements to pre-CGT assets. Under subsection 128-15(2) assets that formed part of the estate of a deceased person are taken to have been acquired by the LPR or beneficiary at the date of the person's death. Because the LPR or beneficiary is taken to have acquired the asset post-CGT (on the facts, the person having died after 19 September 1985), subsection 108-70(2) cannot apply to a later disposal.

4. Example 1

- (a) Omit 'subsection 160P(6)'; substitute 'subsection 108-70(2)'.
- (b) Omit '1991'; substitute '2007'.
- (c) Omit the fourth sentence; substitute:

Subsection 108-70(2) does not deem the improvement to be a separate asset because that provision does not apply to a CGT event that happens because of a person's death.

5. Example 2

- (a) Omit 'Subsection 160X(5) deems the shop to have been acquired'; substitute 'Under subsection 128-15(2) the shop is taken to have been acquired'.
- (b) Omit 'subsection 160P(6)'; substitute 'subsection 108-70(2)'.
- (c) Omit 'paragraph 160X(5)(a)'; substitute 'subsections 128-15(2) and 128-15(4)'.

6. Subject references

Omit the subject references; substitute:

CGT assets; CGT composite assets; CGT events; CGT separate assets; legal personal representatives

7. Legislative references

Omit the legislative references; substitute:

ITAA 1997 108-70(2); ITAA 1997 128-15(2); ITAA 1997 128-15(4)

This Addendum applies from 14 September 2006, the date of effect of the repeal of the former capital gains tax provisions in Part IIIA of the *Income Tax Assessment Act 1936* by *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.

ATO references

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