



TD 96/21 - Income tax: capital gains: if after 19 September 1985 a taxpayer makes a capital improvement to a pre-CGT main residence, and the improvement is deemed to be a separate asset under subsection 108-70(2) of the Income Tax Assessment Act 1997 , is a disposal of that asset subject to the main residence exemption?

 This cover sheet is provided for information only. It does not form part of *TD 96/21 - Income tax: capital gains: if after 19 September 1985 a taxpayer makes a capital improvement to a pre-CGT main residence, and the improvement is deemed to be a separate asset under subsection 108-70(2) of the Income Tax Assessment Act 1997 , is a disposal of that asset subject to the main residence exemption?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *19 May 2010*

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).

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Taxation Determination

Income tax: capital gains: if after 19 September 1985 a taxpayer makes a capital improvement to a pre-CGT main residence, and the improvement is deemed to be a separate asset under subsection 108-70(2) of the *Income Tax Assessment Act 1997*, is a disposal of that asset subject to the main residence exemption?

1. Yes. A deemed separate asset under subsection 108-70(2) of the *Income Tax Assessment Act 1997* (ITAA 1997)¹ can qualify for the main residence exemption in Subdivision 118-B.
2. Under section 118-110 a disposal of a dwelling that was, throughout the taxpayer's period of ownership, the main residence of that taxpayer does not give rise to a capital gain or loss.
3. By section 118-115 a 'dwelling' includes a unit of residential accommodation constituted by, or contained in a building.
4. Subsections 118-120(1) and (2) extends the meaning of 'dwelling' to include adjacent land up to 2 hectares used primarily for private or domestic purposes in association with the dwelling. In the context of section 118-120, 'land' has its common law meaning and includes any structure attached to land so as to become a fixture on the land.
5. Accordingly, while an improvement to a residence can be a separate asset for the purposes of subsection 108-70(2), it can still be part of a 'dwelling'. The dwelling may actually include the improvement (e.g., an extension to a house) or the dwelling may be deemed by section 118-120 to include the improvement. A disposal of that separate asset as part of the dwelling may then be subject to the Subdivision 118-B exemption on disposal.

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

Example 1

6. In 1984 Jack buys a home. In 2003 he extends the home by adding 2 rooms. This results in a capital improvement to the home that will be deemed to be a separate asset under subsection 108-70(2) on disposal.

7. Because the improvement is part of the 'dwelling' as defined in section 118-115, section 118-110 exempts any capital gain attributable to the capital improvement.

Example 2

8. In 1982 Mary buys a home on 0.5 hectares of land. She has an outdoor swimming pool built and associated landscaping done in 2004 for private use. Together these enhancements are an improvement and qualify as a separate asset under subsection 108-70(2).

9. Though a separate asset for subsection 108-70(2) purposes the enhancements form part of a single dwelling for the purposes of Subdivision 118-B. Section 118-120 deems Mary's home to include the pool and landscaping because they are on adjacent land, the property is less than 2 hectares, and the improvements are used privately in association with the dwelling. Section 118-110 exempts any capital gain attributable to the capital improvement.

Commissioner of Taxation15 May 1996

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