

TD 95/D28 - Income tax: capital gains: if after 19 September 1985 a taxpayer makes a capital improvement to a pre-CGT principal residence, and the improvement is deemed to be a separate asset under subsection 160P(6) of the Income Tax Assessment Act 1936 , is a disposal of that asset subject to the exemption for a principal place of residence?

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This document has been finalised by TD 96/21.

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: if after 19 September 1985 a taxpayer makes a capital improvement to a pre-CGT principal residence, and the improvement is deemed to be a separate asset under subsection 160P(6) of the *Income Tax Assessment Act 1936*, is a disposal of that asset subject to the exemption for a principal place of residence?

1. Yes. A deemed separate asset under subsection 160P(6) can qualify for the principal residence exemption under section 160ZZQ.
2. Under subsection 160ZZQ(12), a disposal of a dwelling that was, throughout the taxpayer's period of ownership, the sole or principal residence of that taxpayer does not give rise to a capital gain or loss.
3. By subsection 160ZZQ(1), a 'dwelling' includes a unit of residential accommodation constituted by, or contained in a building.
4. Paragraph 160ZZQ(3)(a) 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 subsection 160ZZQ(3), '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 160P(6), 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 subsection 160ZZQ(3) to include the improvement. A disposal of that separate asset as part of the dwelling may then be subject to the section 160ZZQ exemption on disposal.

Example 1

In 1984 Jack buys a home. In 1987 he extends the home by adding 2 rooms. This results in a capital improvement to the home that is deemed to be a separate asset under subsection 160P(6) on disposal. Because the improvement is part of the 'dwelling' as defined in subsection 160ZZQ(1), subsection 160ZZQ(12) exempts any capital gain attributable to the capital improvement.

Example 2

In 1982 Mary buys a home on 0.5 hectares of land. She has an outdoor swimming pool built and associated landscaping done in 1995 for private use. This results in a capital improvement to the house and land that qualifies as a separate asset under subsection 160P(6). Subsection 160ZZQ(3) 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. Subsection 160ZZQ(12) exempts any capital gain attributable to the capital improvement.

Commissioner of Taxation29/11/95

FOI INDEX DETAIL: Reference No.

Related Determinations: TD 95/D25; TD 95/D26

Subject Ref: composite assets; disposal of assets; improvement; principal residence; separate assets; sole residence

Legislative Ref: ITAA 160P(6); ITAA 160ZZQ; ITAA 160ZZQ(1); ITAA 160ZZQ(3); ITAA 160ZZQ(3)(a);
ITAA 160ZZQ(12)ATO Ref: CGT Cell (CGDET118) INB QLD; NAT 95/9368-3

ISSN 1038 - 8982