


***TD 98/D13 - Income tax: capital gains: what is an 'antique' for the purposes of the definition of 'collectable' in subsection 108-10(2) of the Income Tax Assessment Act 1997 ('the ITAA 1997')?***

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This document has been finalised by TD 1999/40.

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## Draft Taxation Determination

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### **Income tax: capital gains: what is an 'antique' for the purposes of the definition of 'collectable' in subsection 108-10(2) of the *Income Tax Assessment Act 1997* ('the ITAA 1997')?**

1. The word 'antique' is not defined in the ITAA 1997. Whether an asset constitutes an antique for the purposes of this Act is to be determined according to ordinary concepts and usages. It is generally recognised that an antique is an object of artistic and historical significance that is of an age exceeding 100 years. This description is accepted and used for sales tax and customs tariff purposes. We consider it appropriate for the purposes of the ITAA 1997.

2. It follows that an asset may have some of the characteristics of an antique but may not be more than 100 years old at the time a CGT event happens that results in a capital gain or loss. We consider such an asset is not an antique for the purposes of the definition of 'collectables' in section 108-10(2). On the other hand, an asset may not have the characteristics of an antique at its date of acquisition, but may have these characteristics at the time a CGT event occurs that results in the capital gain or loss. In this case, we treat the asset as an antique.

3. Part 3-1 of the ITAA 1997 includes in assessable income any net capital gain made in relation to a CGT event. Division 104 sets out all of the CGT events for which a capital gain or loss can be made. Most CGT events involve a CGT asset. (For many, there is an exception if the CGT asset was acquired before 20 September 1985). Special rules apply to a class of assets known as 'collectables'.

4. The definition of a 'collectable' in subsection 108-10(2), which refers to certain CGT assets that are used or kept mainly for a taxpayer's (or an associate's) personal use or enjoyment, includes an antique. The definition also includes an interest in an antique, a debt arising from an antique, or an option or right to acquire an antique (subsection 108-10(3)).

5. A capital gain or capital loss made from a 'collectable' is disregarded if it was acquired for \$500 or less (subsection 118-10(1)). A capital gain or loss made from an interest in an antique is disregarded only if the market value of the antique (when the interest was acquired) is \$500 or less. If the interest was last acquired before 16 December 1995, a capital gain or loss is disregarded if the **interest** was acquired for \$500 or less (subsection 118-10 of the *Income Tax (Transitional Provisions) Act 1997*).

6. A capital loss from a 'collectable' can only be offset against a capital gain from another 'collectable' (subsection 108-10(1)).

7. **Note:** Subsections 108-10(2), 108-10(3) and 118-10(1), to which this Determination refers, express the same ideas about antiques as subsections 160B(2) and 160B(2A) of the *Income Tax Assessment Act 1936* ('the ITAA 1936'). The views expressed in this Determination apply *mutatis mutandis* to the corresponding provisions of the ITAA 1936.

8. This Determination replaces Taxation Ruling IT 2539. There is no change in the views expressed in IT 2539 about antiques. However, this Determination reflects the change in the law that listed personal-use assets and non-listed personal use assets, as described in section 160B of the ITAA 1936, are now two mutually exclusive categories: 'collectables' (Subdivision 108-B of the ITAA 1997) and 'personal use assets' (Subdivision 108-C).

### Date of Effect

9. This Determination applies in calculating a capital gain or loss as a result of a CGT event that happens in relation to a CGT asset in the 1998-99 income year or any later income year.

### Your comments

10. If you wish to comment on this draft Determination, please send your comments by 18 September 1998 to:

Contact Officer: Ms Lyn Peatfield  
Telephone: (08) 8208 1337  
Facsimile: (08) 8208 1398  
Email: [taxrule@canberra.hotkey.net.au](mailto:taxrule@canberra.hotkey.net.au)

Note that, due to the short comment period, comments by mail are not being accepted.

### Commissioner of Taxation

2 September 1998

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FOI INDEX DETAIL: [Reference No.](#)

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[Subject Ref:](#) antique; capital gain; capital gains tax; capital loss; CGT asset; collectable; net capital gain; personal use asset

[Legislative Ref:](#) ITAA97 Pt 3-1 Div 104; ITAA97 108-B; ITAA97 108-10(1); ITAA97 108-10(2); ITAA97 108-10(3); ITAA97 108-C; ITAA97 118-10; ITAA97 118-10(1); ITAA36 160B; ITAA36 160B(2); ITAA36 160B(2A)

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