


***TD 98/D9 - Income tax: capital gains: what are the CGT consequences of a CGT event happening to post-CGT real property if the property comprises separate CGT assets under Subdivision 108-D in Part 3-1 of the Income Tax Assessment Act 1997 or if the property is sold with depreciable assets?***

 This cover sheet is provided for information only. It does not form part of *TD 98/D9 - Income tax: capital gains: what are the CGT consequences of a CGT event happening to post-CGT real property if the property comprises separate CGT assets under Subdivision 108-D in Part 3-1 of the Income Tax Assessment Act 1997 or if the property is sold with depreciable assets?*

This document has been finalised by [TD 98/24](#).

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: what are the CGT consequences of a CGT event happening to post-CGT real property if the property comprises separate CGT assets under Subdivision 108-D in Part 3-1 of the *Income Tax Assessment Act 1997* or if the property is sold with depreciable assets?**

1. Subdivision 108-D sets out cases in which an asset that would be regarded as a single asset under property law is to be treated as more than one asset for CGT purposes. The Subdivision treats each of the following as a CGT asset separate from post-CGT land to which it is attached:

- a building or structure on land acquired on or after 20 September 1985 (subsection 108-55(1)) or a capital improvement to land acquired at any time (subsection 108-70(1)), if one of the balancing adjustment provisions in the table below applies to the building, structure or improvement (whether or not there is a balancing adjustment):

<b>Balancing adjustment provisions</b>		
<b>Item</b>	<b>For this capital allowance:</b>	<b>You do a balancing adjustment under:</b>
1	Depreciation	Subdivision 42-F
2	Mining	Subdivision 330-J
3	Research and development	section 73B of the <i>Income Tax Assessment Act 1936</i>
4	Timber mill buildings	Subdivision 387-G
5	Timber operations: access roads	Subdivision 387-G

**Note (a):** A building or structure constructed on or after 20 September 1985 on land acquired before that date is always treated as a separate CGT asset (subsection 108-55(2)).

- a unit of plant that is part of a building or structure which is taken to be a separate CGT asset from the building or structure (section 108-60);

**Note (b):** Chattels (e.g., items of furniture) that are sold with the property are separate CGT assets in their own right and are not part of the real property. This is the case whether the chattels were acquired with the property or afterwards.

2. On a CGT event happening to the real property, that CGT event happens to each separate asset comprising the property and a separate capital gain or loss calculation is necessary for each CGT asset. The capital proceeds from each CGT event are so much of the overall capital proceeds as is reasonably attributable to that event (subsection 116-40(1)).
3. If the property is disposed of under a contract, it is preferable that the parties allocate the overall capital proceeds to the separate assets in the contract.
4. If the contract is made, including the allocation of the capital proceeds, by parties dealing with each other at arm's length, we will accept the allocation for the purpose of subsection 116-40(1).
5. We will accept a later agreement, between the parties in paragraph 4, that allocates the capital proceeds if this was not done in the original contract.
6. In the absence of an agreed allocation, each party needs to make their own reasonable apportionment of the capital proceeds to the separate assets. In making this apportionment, it is expected that each party would generally have regard to, and be able to justify, their reasonable apportionment based on the relevant market values of the separate assets at the time of the making of the contract.
7. It should be noted that the written down values of depreciable assets are not necessarily their market values.

**Note (c):** This draft Taxation Determination rewrites Taxation Determination TD 94/64. From the beginning of the 1998-99 income year, this Determination, rather than TD 94/64, applies to CGT events under the *Income Tax Assessment Act 1997* that happen to real property. It implements a change in the law underlying TD 94/64 by now applying separate asset treatment to a building or structure on post-CGT land only if one of the balancing adjustment provisions applies (sections 108-55 and 108-70). Improvements that entitle owners to a deduction for capital works expenditure are no longer treated as assets separate from the land.

An Addendum to TD 94/64 will be issued on finalisation of this draft Determination. The wording will be:

1. After paragraph 8, insert:
  - "9. This Determination continues to apply to disposals of real property under the *Income Tax Assessment Act 1936* occurring before the beginning of the 1998-99 income year. From the beginning of the 1998-99 income year, this Determination does not apply to a CGT event under the *Income Tax Assessment Act 1997* (the 1997 Act) that happens to real property. Rather, Taxation Determination TD 98/xx [i.e., the final version of TD 98/D8] applies."

**Note:** The 1997 Act now applies separate asset treatment to a building or structure on post-CGT land only if one of the balancing adjustment provisions applies (sections 108-55 and 108-70). Improvements that entitle owners to a deduction for capital works expenditure are no longer treated as assets separate from the land. This Addendum reflects this change in the law by specifying that Taxation Determination TD 94/64 does not apply to CGT events that happen after the beginning of the 1998-99 income year."

### **Example 1**

*Jane acquires land with a building on it on 1 March 1999 at a cost of \$70,000. She pays \$25,000 at that time to install air conditioning plant which is subject to the depreciation provisions of Division 42 and to which the balancing adjustment provisions of Subdivision 42-F also apply. The plant is installed ready for use for income producing purposes from 1 July 1999 and Jane is entitled to an annual depreciation deduction of \$2,250 (i.e., 9% of \$25,000 (prime cost)).*

*In this situation the plant is a separate asset from the land and building and must be accounted for separately. The building itself is not an asset separate from the land, in this example, because it is not subject to one of the balancing adjustment provisions listed in the table above and was not constructed on land acquired before 20 September 1985.*

**Note (d):** *if the land had been acquired before 20 September 1985, and the building was constructed on it on or after that date, the building would be a separate asset.*

*Continuing the example, the property is sold on 1 July 2003 for a total consideration of \$200,000. Of that amount, \$190,000 is reasonably attributable to the land and building and \$10,000 to the plant.*

*Correctly treating the plant as a separate asset from the land and building in accordance with the CGT provisions results in a net capital gain of \$86,840 being:*

<i>Land &amp; building</i>	<i>Sale price - Cost base as indexed</i>	
	$\$190,000 - (\$70,000 \times [\text{say}] 1.388)$	$= \$92,840$
<i>Plant</i>	<i>Reduced cost base - Sale price</i>	
	$(\$25,000 - \$9,000) - \$10,000$	$= (\$6,000)$
	<i>Net capital gain</i>	$= \$86,840$

*If the land, building and plant were incorrectly treated as a single asset, the capital gain made would be \$68,140 (Sale price \$200,000 - Cost base as indexed  $(\$95,000 \times [\text{say}] 1.388)$ ).*

**Note (e):** *For simplicity, incidental costs on acquisition and disposal have been ignored in this example. In practice, they would need to be apportioned.*

### **Example 2**

*Jack acquires a residential property for rental purposes. As the previous/owner had recently replaced the hot water system and curtains throughout the house, these items are*

*depreciable property in Jack's hands. Jack purchases other depreciable items over the period the rental property is owned.*

*If the property is sold, Jack is required to account separately (as outlined in **Example 1**) for the hot water system and curtains, together with all other depreciable items sold with the property.*

**Your comments**

If you want to comment on this draft Determination, please send your comments by Friday 17 July 1998 to:

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

**Commissioner of Taxation**

1 July 1998

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

[Related Determinations:](#) TD 94/64

[Related Rulings:](#)

[Subject Ref:](#) apportionment; balancing adjustments; building write-off; capital improvement; CGT depreciable assets; CGT separate assets; contract; contract law; depreciable assets; real estate; real property; separate assets

[Legislative Ref:](#) ITAA36 73B; ITAA97 42-F; ITAA97 108-D; ITAA97 108-55(1); ITAA97 108-55(2); ITAA97 108-60; ITAA97 108-70(1); ITAA97 116-40(1); ITAA97 330-J; ITAA97 387-G

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