



***TD 96/18 - Income tax: capital gains: if after 19 September 1985 a person makes a capital improvement to a pre-CGT asset, does subsection 108-70(2) of the Income Tax Assessment Act 1997 deem the improvement to be a separate CGT asset on the person's death or on any later disposal by the legal personal representative (LPR) or a beneficiary?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *31 March 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.]

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## Taxation Determination

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**Income tax: capital gains: if after 19 September 1985 a person makes a capital improvement to a pre-CGT asset, does subsection 108-70(2) of the *Income Tax Assessment Act 1997* deem the improvement to be a separate CGT asset on the person's death or on any later disposal by the legal personal representative (LPR) or a beneficiary?**

### On the person's death

1. No. Under subsection 108-70(2) of the *Income Tax Assessment Act 1997* (ITAA 1997)<sup>1</sup> 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.

### On a later disposal by the LPR or beneficiary

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.

### Example 1

*Jim purchased a repair shop in 1984. He makes an improvement to which subsection 108-70(2) would normally apply. In January 2007 Jim dies, leaving the repair shop to his son, Jim Junior. 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.*

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

*Example 2*

*After the estate is finalised, Jim Junior sells the repair shop. Under subsection 128-15(2) the shop is taken to have been acquired at the time of Jim's death. Because Jim Junior acquired the repair shop after 19 September 1985, subsection 108-70(2) does not apply to the disposal.*

*For the purpose of calculating a capital gain or loss on a later disposal, Jim Junior is deemed to have acquired the repair shop, including the improvements, at the date of Jim's death for market value at that date (subsections 128-15(2) and 128-15(4)).*

**Commissioner of Taxation**15 May 1996

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