


TD 96/21A1 - Addendum - 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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Addendum

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?

This Addendum amends Taxation Determination TD 96/21 to reflect the rewritten capital gains tax provisions in Part 3-1 of the *Income Tax Assessment Act 1997*.

TD 96/21 is amended as follows:

1. Title

- (a) Omit 'principal residence'; substitute 'main residence'.
- (b) Omit 'subsection 160P(6) of the *Income Tax Assessment Act 1936*'; substitute 'subsection 108-70(2) of the *Income Tax Assessment Act 1997*'.
- (c) Omit 'exemption for a principal place of residence' substitute 'main residence exemption'

2. Paragraph 1

Omit the paragraph; substitute:

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.

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

3. Paragraph 2

- (a) Omit 'subsection 160ZZQ(12)'; substitute 'section 118-110'.
- (b) Omit 'sole or principal residence'; substitute 'main residence'.

4. Paragraph 3

Omit 'subsection 160ZZQ(1)'; substitute 'section 118-115'.

5. Paragraph 4

- (a) Omit 'Paragraph 160ZZQ(3)(a)'; substitute 'Subsections 118-120(1) and (2)'.
- (b) Omit 'subsection 160ZZQ(3)'; substitute 'section 118-120'.

6. Paragraph 5

- (a) Omit 'subsection 160P(6)'; substitute 'subsection 108-70(2)'.
- (b) Omit 'subsection 160ZZQ(3)'; substitute 'section 118-120'.
- (c) Omit '160ZZQ'; substitute 'Subdivision 118-B'.

7. Examples 1 and 2

Omit the examples; substitute:

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.*

8. Subject references

Omit the subject references; insert 'CGT assets; CGT composite assets; CGT events; CGT exemptions; CGT main residence exemption; CGT separate assets; pre-CGT assets'.

9. Legislative references

Omit the legislative references; insert 'ITAA 1997; ITAA 1997 108-70(2); ITAA 1997 118-B; ITAA 1997 118-110; ITAA 1997 118-115; ITAA 1997 118-120; ITAA 1997 118-120(1); ITAA 1997 118-120(2)'.

This Addendum applies from 14 September 2006, the date of effect of the repeal of the former capital gains tax provisions in Part IIIA of the *Income Tax Assessment Act 1936* by *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.

Commissioner of Taxation19 May 2010

ATO references

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