

TD 97/3 - Income tax: capital gains: if a parcel of land acquired after 19 September 1985 is subdivided into lots ('blocks'), do Parts 3-1 and 3-3 of the Income Tax Assessment Act 1997 treat a disposal of a block of the subdivided land as the disposal of part of an asset (the original land parcel) or the disposal of an asset in its own right (the subdivided block)?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *19 May 2010*

FOI Status: may be released

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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.]

Taxation Determination

Income tax: capital gains: if a parcel of land acquired after 19 September 1985 is subdivided into lots ('blocks'), do Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* treat a disposal of a block of the subdivided land as the disposal of part of an asset (the original land parcel) or the disposal of an asset in its own right (the subdivided block)?

Why issue this Taxation Determination?

Depending on the view adopted as to the effect of subdividing land, arguably two provisions in Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (ITAA 1997)¹, section 112-25 and section 112-30, can apply to determine the cost base and reduced cost base of a subdivided block. Section 112-30 apportions costs on the basis of market values, whereas section 112-25 merely requires that the apportionment be reasonable. In particular cases, the use of one provision rather than another may lead to materially different CGT outcomes.

Answer to question posed in this Taxation Determination

1. The disposal of a subdivided block is treated as the disposal of an asset in its own right, and not as a disposal of part of an asset (the original land parcel).
2. We consider that the effect of registering separate new titles under the subdivision is, for the purposes of Parts 3-1 and 3-3, to divide the original land parcel into two or more assets (viz., the subdivided blocks). The subdivided blocks are then treated as separate assets under the capital gains provisions. They are taken to have been acquired by the owner of the original land parcel when that original parcel was acquired.

Alternative view: An alternative view is that a subdivision of land merely changes the way the original asset is owned. That is, the original land parcel is now held by way of a number of separate titles rather than the original title.

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

Reasons

3. We consider that the 'split asset' view is the correct view because it recognises that the land owner has assets after the subdivision which can be dealt with separately. Also, title to the original land parcel, on subdivision, will often cease to exist. The original asset has been divided into two or more assets (the subdivided blocks).
4. If an original land parcel is split into two or more blocks, and you are the beneficial owner of the original land parcel and each of the new blocks, section 112-25 provides that each element of the cost base and reduced cost base of the original asset (worked out at the time of the split) is apportioned in a reasonable way and included in the corresponding element of the cost base and reduced cost base of each new asset.

5. The consequences above should be contrasted with a situation where a person disposes of an **interest** in land. For example, a person may dispose of a 50% interest in land the person owns. The disposal of the 50% interest in the land constitutes a disposal of part of the land to which section 112-30 applies.

Note: In determining, for the purposes of section 112-25, the extent to which it is reasonable to attribute each element of the cost base and reduced cost base of the original land to the corresponding element of the cost base and reduced cost base of each new block, we would accept any approach that is appropriate in the circumstances of the particular case, e.g., on an area basis or relative market value basis.

Example 1

Albert subdivides land, which he purchased in 1986 for \$150,000, into 5 blocks of equal size and value. On the registration of new titles, the original asset (the land) is 'split' into 5 separate assets for CGT purposes (i.e., the subdivided blocks). In this case it would be reasonable to attribute \$30,000 of the original cost to each block. Albert then sells one block for \$200,000. Albert would make a capital gain of \$170,000 on the disposal of the block that is, \$200,000 less \$30,000 (assuming no other amounts are included in the cost base of the asset).

Note: In any land subdivision, the potential application of the revenue provisions must be considered. In the example above, we have assumed that the land is not trading stock and that the net profit is not assessable income under section 6-5.

Example 2

John subdivides his post-CGT land into two new blocks with a view to selling one and retaining the other. He incurs the following costs:

survey fees; legal fees; subdivision application fees; and cost of connecting electricity and water only to the subdivided block to be sold.

John includes all of these costs in the relevant cost base of the block to be sold. We consider that this is not a reasonable apportionment. It is reasonable to apportion the survey, legal and subdivision application fees over both blocks. If the blocks are of unequal market value, an apportionment of costs in proportion to the market value of the blocks would usually be a reasonable apportionment. As the cost of connecting the electricity and water relates only to the block to be sold, it would be reasonable to attribute this cost solely to the cost base of this block.

A reasonable apportionment of the cost of the land itself can usually be achieved on an area basis if all the land is of similar market value or on a relative market value basis if this is not the case.

Example 3

Jane purchases one hectare of land in 1992. Part of the land is a good quality building block (one-quarter of a hectare) worth 75% of the total market value of the property. The balance of the land is low-lying flood-plain. In 2007, Jane subdivides off the flood-plain. It would be reasonable in the circumstances to apportion 75% of the original acquisition cost of the property to the 'building block' and 25% to the 'flood-plain'.

Commissioner of Taxation22 January 1997

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Related Determinations:

Related Rulings:

Subject Ref: capital gains tax; CGT assets; CGT cost base; CGT cost base modification rules; CGT cost base modification rules – split; changed or merged asset rule; CGT subdivision of land; CGT reduced cost base; original assets

Legislative Ref: ITAA 1997; ITAA 1997 6-5; ITAA 1997 Part 3-1; ITAA 1997 Part 3-3; ITAA 1997 112-25; ITAA 1997 112-30

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