


***TD 1999/40 - 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?***

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## 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*?**

#### **Preamble**

This Taxation Determination is a ‘public ruling’ for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.

#### **Date of effect**

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. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. The word ‘antique’ is not defined in the *Income Tax Assessment Act 1997* (‘ITAA 1997’). Whether an asset constitutes an antique for the purposes of the ITAA 1997 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. Whether an asset has the character of an antique is determined when a CGT event happens to it and not when it is acquired. 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 capital loss. Such an asset is not an antique for the purposes of the definition of ‘collectable’ in subsection 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 capital loss. In this case, the asset is an antique.
3. Part 3-1 of the ITAA 1997 includes in assessable income any net capital gain made in relation to an income year. Division 104 sets out all of the CGT events for which a capital gain or capital loss can be made. Most CGT events involve a CGT asset. Special rules apply to a class of assets known as ‘collectables’.
4. The definition of a ‘collectable’ in subsection 108-10(2) of the ITAA 1997, 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 capital 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 capital loss is disregarded if the **interest** was acquired for \$500 or less (section 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)).

**Note:**

7. 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* ('ITAA 1936'). The views expressed in this Determination apply, adapted as necessary to the corresponding provisions of the ITAA 1936.

**Previous Rulings**

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).

**Commissioner of Taxation****4 August 1999**

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*Previous draft:*

Previously released as TD 98/D13

*Subject references:*

antiques; capital gains; capital gains tax; capital loss; CGT assets; collectables; net capital gain; personal use assets

*Legislative references:*

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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**ATO references:**

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