



TD 94/64 - Income tax: capital gains: what are the CGT consequences of the disposal of real property if the property comprises separate CGT assets under section 160P of the Income Tax Assessment Act 1936 (the Act) or if the property is sold with depreciable assets?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *21 July 1994*

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).

Taxation Determination

Income tax: capital gains: what are the CGT consequences of the disposal of real property if the property comprises separate CGT assets under section 160P of the *Income Tax Assessment Act 1936* (the Act) or if the property is sold with depreciable assets?

1. For CGT purposes, section 160P of the Act treats each of the following as an asset separate from land:
 - any capital improvement to land which produces qualifying expenditure eligible for write-off under Division 10D of Part III;
 - any other capital improvement to land which is treated by non-CGT provisions as an asset separate from the land (e.g. an improvement which qualifies as depreciable plant or a dam for which capital expenditure is eligible for write-off under section 75B).
2. Chattels (e.g. items of furniture) which are sold with the property are also separate assets for CGT purposes. This is the case whether the chattels were acquired with the property or afterwards.
3. On disposal of the property, a separate capital gain or loss calculation is necessary for each CGT asset.
4. If the property is disposed of under a contract, it is preferable that the parties allocate the overall consideration to the separate assets in the contract.
5. If the contract is made, including the allocation of the consideration, by parties dealing with each other at arm's length, we will accept the allocation for the purposes of subsection 160P(7) and subsection 160ZD(4).
6. We will accept a later agreement, between the parties in paragraph 5, which allocates the consideration if this was not done in the original contract.
7. In the absence of an agreed allocation, each party needs to make his or her own reasonable apportionment. In making this apportionment, it is expected that each party would generally have regard to, and be able to justify, his or her reasonable apportionment based on the relevant market values of the separate assets at the time of the making of the contract.

8. It should be noted that the amount of 'residual capital expenditure' of a building which is eligible for write-off under Division 10D is not necessarily its market value. Similarly, the written down values of depreciable assets are not necessarily their market values.

Example 1

Jane acquires land on 1 March 1986 at a cost of \$70,000. She pays \$25,000 at that time to construct an income-producing building and construction is completed by 30 June 1986. The property is used for income producing purposes from 1 July 1986 and Jane is entitled to an annual Division 10D deduction of \$1,000 (i.e. 4% of \$25,000).

The property is sold on 1 July 1990 for a total consideration of \$200,000. Of that amount, \$190,000 is reasonably apportioned to the land and \$10,000 to the building.

Correctly treating the land and building as separate assets in accordance with the CGT provisions results in a net capital gain of \$81,840 being:

<i>Land</i>	<i>Sale Price \$190,000 - Indexed Cost (\$70,000 x 1.388)</i>	<i>\$92,840</i>
<i>Building</i>	<i>Reduced Cost Base (\$25,000 - \$4,000) - Sale Price \$10,000</i>	<i>(11,000)</i>
	<i>Net Capital Gain</i>	<i><u>\$81,840</u></i>

If the land and building were incorrectly treated as a single asset, the capital gain arising would be \$68,140 (Sale Price \$200,000 - Indexed Cost (\$95,000 x 1.388)).

Note: *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. The building was constructed in the 1970s and there is no entitlement to building write-off. 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 for the hot water system and curtains together with all other depreciable items sold with the property.

Commissioner of Taxation

21/7/94

FOI INDEX DETAIL: Reference No. I 1217662 Previously issued as Draft TD 93/D266

Subject Ref: apportionment; building write-off; capital improvement; contract; depreciable assets; real property; separate assets

Legislative Ref: ITAA 75B; ITAA Pt III Div 10D; ITAA 160P; ITAA160P(7); ITAA160ZD(4)

ATO Ref: CHM ADV (CGTDT82A)

ISSN 1038 - 8982