



Effects of the Addendum to Taxation Ruling 2002/14

Relying on this Compliance Guideline

This Practical Compliance Guideline sets out a practical administration approach to assist taxpayers in complying with relevant tax laws. Provided you follow this guideline in good faith, the Commissioner will administer the law in accordance with this approach.

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What this Guideline is about

1. This Guideline sets out some of the effects of the Addendum dated 26 November 2014 to Taxation Ruling 2002/14 *Income tax: taxation of retirement village operators* (TR 2002/14A2) for retirement village operators making capital growth payments before, on or after, 26 November 2014.

Date of effect

2. This Guideline applies both before and after date of issue. It will be reviewed in accordance with the ATO's standard review process to ensure the currency and relevance of the content, and that the content maintains alignment with Australian taxation requirements and industry practice.

Guideline

The Addendum to TR 2002/14

3. On 26 November 2014, the ATO issued an addendum to TR 2002/14 to replace the view that capital growth payments are capital. The replacement paragraph 50 in TR 2002/14A2 reflects the decisions in *Re Retirement Village Co and Federal Commissioner of Taxation*¹ and *Re Retirement Village Operator and Federal Commissioner of Taxation*². It confirms that when a retirement village operator makes a capital growth payment to an outgoing resident, the payment is deductible to the retirement village operator under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

¹ [2011] AATA 298; 2011 ATC 1-031; (2011) 83 ATR 757.

² [2013] AATA 887; 2013 ATC 1-061; (2013) 96 ATR 455.

Treatment of capital growth payments made before 26 November 2014

4. If you made capital growth payments to outgoing residents **before** 26 November 2014, and relied on TR 2002/14 as it was prior to the addendum issued on that date, you may choose to continue relying on the ruling as it was prior to the addendum, and treat the payments as capital.
5. If you choose to do this, the capital growth payments made before 26 November 2014:
 - are not deductible under section 8-1 of the ITAA 1997, and
 - can be included in the cost base or reduced cost base of an independent living unit or serviced apartment under Subdivision 110-A of the ITAA 1997.
6. If you do not choose to do this, the capital growth payments made before 26 November 2014:
 - are deductible under section 8-1 of the ITAA 1997, and
 - cannot be included in the cost base or reduced cost base of an independent living unit or serviced apartment under Subdivision 110-A of the ITAA 1997.

Consolidated groups and the tax cost of the assets of an entity who joined a group before 26 November 2014

7. As a result of TR 2002/14A2, a head company retirement village operator of a consolidated group may face retrospective adjustments to the allocable cost amount and the tax cost of the assets of an entity who joined the group before 26 November 2014, for capital growth payments made before, on, or after 26 November 2014.
8. To obviate these retrospective adjustments, the ATO confirms that a head company retirement village operator may choose to apply section 104-525 of the ITAA 1997 resulting in CGT event L6 happening and the head company making a capital gain if it believes it has a *net overstated amount* (worked out under subsection 104-525(3) of the ITAA 1997) in respect of such a joining entity.

Amendment requests and objections

9. To give effect to TR 2002/14A2, you may:
 - request an amendment to an assessment under section 170 of the *Income Tax Assessment Act 1936* (ITAA 1936), or
 - object against an assessment under section 175A of the ITAA 1936.
10. Where you object against an assessment made on or before 12 November 2014 but the objection will not be lodged within the period prescribed by paragraph 14ZW(1)(aa) of the *Taxation Administration Act 1953* (TAA 1953), you may, under subsection 14ZW(2) of the TAA 1953, nevertheless lodge the objection with the Commissioner together with a written request asking the Commissioner to deal with the objection as if it had been lodged within that period. This is providing that, on or after 6 May 2011, had you lodged such an objection, it would have been lodged within that prescribed period.
11. In considering such a request, the Commissioner will consider the guidelines in Law Administration Practice Statement PS LA 2003/7 *How to treat a request to lodge a late objection*.

Commissioner of Taxation
26 August 2016

References

ATOlaw topic(s)	Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events L1 to L8 - consolidated groups and multiple entry consolidated groups Income tax ~~ Assessable income ~~ Income vs capital
Legislative references	ITAA 1997 8-1 ITAA 1997 Subdiv 110-A ITAA 1997 104-525 ITAA 1997 104-525(3) ITAA 1936 170 ITAA 1936 175A TAA 1953 14ZW(1)(aa) TAA 1953 14ZW(2)
Case references	<i>Re Retirement Village Co and Federal Commissioner of Taxation</i> [2011] AATA 298; 2011 ATC 1-031; (2011) 83 ATR 757 <i>Re Retirement Village Operator and Federal Commissioner of Taxation</i> [2013] AATA 887; 2013 ATC 1-061; (2013) 96 ATR 455
Related Rulings/Determinations	TR 2002/14
Other references	PS LA 2003/7
BSL	PGH

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