



Taxation Determination

Income tax: capital gains: does the word ‘expiring’ in paragraph 104-25(1)(c) and the expression ‘expiry of a CGT asset’ in subparagraph 116-30(3)(a)(i) of the *Income Tax Assessment Act 1997* include voluntary terminations?

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 when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

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 settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. No.
2. The word ‘expiring’ in paragraph 104-25(1)(c) of the *Income Tax Assessment Act 1997* and the expression ‘expiry of a CGT asset’ in the market value substitution rule in subparagraph 116-30(3)(a)(i) are limited to an expiry by an effluxion or lapse of time; for example, when the specified time period of a lease expires.
3. Subsection 116-30(1) substitutes market value if no capital proceeds are received from a CGT event. The purpose of subsection 116-30(1) is to prevent an inappropriate capital loss arising if a CGT asset is given up for no capital proceeds. The market value substitution rule ensures that if no capital proceeds are received by the taxpayer, the taxpayer is deemed to have received the market value of the asset as capital proceeds.
4. The expiry of a CGT asset in terms of CGT event C2 (about the cancellation, surrender and similar endings of intangible CGT assets) in section 104-25 is excluded from the market value substitution rule by subparagraph 116-30(3)(a)(i). The purpose of subparagraph 116-30(3)(a)(i) is to prevent the market value substitution rule from applying when the market value of an asset has diminished through the normal course of events to the point where it is nil; for example, on the expiry of a lease agreement.

5. When a lease expires, it has no value. Substituting a market value at the time the asset ends, as if the lease had not expired, would give an inappropriate result. However, before a lease expires it has a value that reflects the remaining term of the lease. If the lease is voluntarily terminated before it expires, it is appropriate to substitute a market value on termination. Whether the market value is a positive amount or nil depends on the facts of each case.

Example 1

6. *An option to acquire shares has a value of \$100 before it expires (i.e., the exercise price of the option is \$500 whereas the market value of the shares is \$600). If you allow the option to expire, you receive no capital proceeds for the expired option and subparagraph 116-30(3)(a)(i) ensures that there is no market value substitution. However, if, before the option expires, you give up your rights under the option and receive no capital proceeds, you are deemed to have received the market value of \$100.*

Example 2

7. *George has a 5 year lease over an office building for which he paid a premium of \$10,000. George decides to retire early from business and surrenders the lease to the lessor 4 years into the term. As the lease did not expire, but was surrendered, the normal market value substitution rule applies to the capital proceeds from the CGT event that happens when the lease ends (CGT event C2). George is treated as having received the market value of the unexpired term (1 year) of the lease. If the market value is \$2,000, George makes a capital loss of \$8,000 (\$10,000 cost base of the lease less the \$2,000 capital proceeds). If the lease had expired at the end of its term, George would not be treated as having received any capital proceeds and George would make a \$10,000 capital loss.*

Commissioner of Taxation

15 December 1999

Previous draft:

Previously released as TD 1999/D88

Subject references:

capital gains; capital losses; capital proceeds; CGT asset; CGT event; CGT event C2; expiring; expiry; lease; market value; option

Legislative references:

ITAA1997 104-25; ITAA1997 104-25(1)(c); ITAA1997 116-30(1); ITAA1997 116-30(3)(a)(i); ITAA1997 116-30(3)(a)(ii)

*ATO references:*NO 99/11446-1
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