
Taxation Determination

Income tax: capital gains: can the first element of the cost base of a CGT asset in subsection 110-25(2) of the *Income Tax Assessment Act 1997* include money paid or property given to an entity other than the one from which the asset was acquired?

Preamble

*The number, subject heading, date of effect and paragraph 1 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

1. Yes. The money does not have to be paid or property given to the entity from which the asset was acquired. However, the money or property still needs to have been paid or given in respect of the acquisition of the asset.

Example

Bill sells an asset to James for \$100,000. The terms of the sale are that James must pay the \$100,000 to an entity nominated by Bill. Even though James does not pay the money to Bill, the person who disposed of the asset, James pays it 'in respect of acquiring' the asset and he can include it in the first element of the asset's cost base.

Note that the \$100,000 will be considered as capital proceeds Bill receives in respect of a CGT event happening.

Date of effect

2. This Determination applies 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).

TD 2003/1

Commissioner of Taxation

19 February 2003

Previous draft:

Previously released as TD 2002/D11

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/16

Subject references:

- acquisition
- asset
- CGT asset
- cost base
- disposed
- entity
- first element
- give
- giving
- money
- pay
- property

Legislative references:

- ITAA 1997 110-25(2)
- TAA 1953 Part IVAAA

ATO References

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