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Page status: **not legally binding**

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Ruling Compendium – TD 2012/13

This is a compendium of responses to the issues raised by external parties to the draft Taxation Determination TD 2011/D5 – Income Tax: will the gain or loss resulting from the expiration, sale, termination or exercise of a hedging financial arrangement to which a hedging financial arrangement election applies be determined and allocated in accordance with subsection 230-300(2) and 230-300(3) of the *Income Tax Assessment Act 1997*?

Please note that all legislative references in this ruling compendium are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft Determination.

Summary of issues raised and responses

Issue No.	Issue raised	Tax Office Response/Action taken
1	<u>Assumption</u> The draft Determination proceeds on the assumption that an event listed in the table of section 230-305 has not occurred. It then resorts to a contextual reading of subparagraph 230-300(5) to conclude that a gain or loss resulting from the expiration, sale, termination or exercise (collectively 'cessation event') of a hedging financial arrangement (HFA) must be allocated over the income years according to the determination in section 230-360 by virtue of subsection 230-300(3). It is submitted that the assumption is erroneous.	The ATO is of the view that a cessation event in respect of a hedging financial arrangement to which the HFA applies is not of itself an event that is listed in the table in section 230-305. This is notwithstanding that the effect of the happening of a cessation event, and the happening of an event in the table, is the same: there is no longer a hedging financial arrangement to which the hedging election applies Nevertheless, the title of the draft Determination has been amended to remove the words 'where that expiration, sale, termination or exercise happens before an occurrence of an event listed in the table in section 230-305 of the <i>Income Tax Assessment Act 1997</i>' as this is already reflected in the requirement that there is a HFA to which the hedging election applies.

Issue No.	Issue raised	Tax Office Response/Action taken
2	<u>Item 1(c) in the table of section 230-305</u> The draft Determination does not consider the operation of item 1(c) in the table of section 230-305 on the occurrence of a cessation event. It is expected that in cases where there is a cessation event, the taxpayer will cease to meet the requirements of section 230-365 (hedge effectiveness). Where hedge accounting rules of the <i>Accounting Standard AASB 139</i> (AASB 139) cannot be met, it follows that hedge effectiveness requirements of section 230-365 cannot be satisfied. Hence, item 1(c) in the table of section 230-305 should apply.	The draft Determination took into account the accounting principles in AASB 139. Specifically, the term 'cessation event' which collectively incorporates expiration, sale, termination or exercise of a HFA, has been taken from similar wording used in paragraphs 91 and 101 of AASB 139 (dealing with discontinuation of hedge accounting). These paragraphs appear to draw a distinction between cessation events and a failure to meet hedge effectiveness requirements. This distinction is also disclosed on the face of the provisions in the law. It is the ATO's view that item 1(c) in the table of section 230-305 does not apply where a cessation event happens in respect of an entire HFA.
3	<u>Partial Cessation Events</u> The draft Determination indicates that having the arrangement must survive the happening of the event for subsection 230-300(5) to apply. However, in the circumstances of a partial cessation event some part of the HFA does survive. The final determination should include a discussion on a partial cessation event.	Paragraph 12 of the draft Determination explains that the operation of subsection 230-300(5) indicates that a HFA must survive the happening of event listed in the table in section 230-305. The deemed reacquisition of a HFA at fair value under paragraph 230-300(5)(b) indicates the provision would not apply upon the complete cessation of a HFA. This does not preclude the happening of an event in the table in section 230-305 where there is only a partial cessation of a HFA, that is, where the HFA does not come to a complete end. In these circumstances, it is possible for item 1(c) of the table to apply if hedging effectiveness is compromised. The final Determination now includes a reference to a partial cessation in the Explanation.