TD 2021/2EC - Compendium

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Australian Government
Australian Taxation Office

Public advice and guidance compendium – TD 2021/2

Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Taxation Determination TD 2019/D4 *Income tax: can a company that carries on a business in a general sense as described in TR 2019/1 but whose only activity is renting out an investment property claim the CGT small business concessions in relation to that investment property?* It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
1	The Determination should make mention of (such as a footnote) whether an asset's main use is to derive rent will depend on the circumstances, with reference to Taxation Determination TD 2006/78 *Income tax: capital gains: are there any circumstances in which the premises used in a business of providing accommodation for reward may satisfy the active asset test in section 152-35 of the Income Tax Assessment Act 1997 notwithstanding the exclusion in paragraph 152-40(4)(e) of the Income Tax Assessment Act 1997 for assets whose main use is to derive rent?*	A reference to TD 2006/78 has been included in paragraph 11 of the final Determination.
2	The Determination does not acknowledge the application of paragraph 152-40(4A) to the use of an asset by an affiliate or an entity connected to you, which treats this as your use.	The example in paragraph 2 of the final Determination has been updated to reflect that the investment property is leased to an unrelated party.
3	The purpose of the Determination was queried, as it was believed that this was a straight-forward application of the law.	The purpose of the Determination is to make clear the Commissioner's view that while a company may be considered to be carrying on a business (as described in Taxation Ruling TR 2019/1 *Income tax: when does a company carry on a business?*) where its investment property is used to derive rent, for the purposes of the capital gains tax small business concessions in Division 152, whether the property satisfies the active asset test under section 152-40 is a separate consideration.