

TD 1999/79 - Income tax: capital gains: does the expression 'lost or destroyed' for the purposes of CGT event C1 in subsection 104-20(1) of the Income Tax Assessment Act 1997 apply to:(a) a voluntary 'loss' or 'destruction'? (b) intangible assets?

 This cover sheet is provided for information only. It does not form part of *TD 1999/79 - Income tax: capital gains: does the expression 'lost or destroyed' for the purposes of CGT event C1 in subsection 104-20(1) of the Income Tax Assessment Act 1997 apply to:(a) a voluntary 'loss' or 'destruction'? (b) intangible assets?*



Taxation Determination

Income tax: capital gains: does the expression ‘lost or destroyed’ for the purposes of CGT event C1 in subsection 104-20(1) of the *Income Tax Assessment Act 1997* apply to:

- (a) a voluntary ‘loss’ or ‘destruction’?**
- (b) intangible assets?**

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).

Voluntary ‘loss or ‘destruction’

1. CGT event C1 (about the loss or destruction of CGT assets) in subsection 104-20(1) of the *Income Tax Assessment Act 1997* happens if a CGT asset you own is lost or destroyed. The words ‘lost’ and ‘destroyed’ in subsection 104-20(1) are not defined in the Act and they take their ordinary meaning.
2. The word ‘lost’ in its context in subsection 104-20(1) does not contemplate voluntary actions. *The Macquarie Dictionary*, 3rd ed, defines ‘lost’ as ‘1. past tense and past participle of **lose**’ and defines ‘lose’ as ‘1. to come to be without, by some chance, and not know the whereabouts of: *to lose a ring*’. The word in its context in CGT event C1 suggests an involuntary rather than a voluntary act.
3. The word ‘lost’ in subsection 104-20(1) is wide enough to cover some situations where an asset is confiscated. However, other situations involving confiscation may amount to forfeiture (CGT event C2 - about cancellation, surrender and similar endings - in section 104-25) or a change of ownership (CGT event A1 - about disposals of CGT assets - in section 104-10), so that the circumstances of each case determine the relevant CGT event.

4. The word ‘destroyed’ in subsection 104-20(1) contemplates both voluntary and involuntary actions. *The Macquarie Dictionary*, 3rd ed, defines the word ‘destroy’ as ‘1. to reduce to pieces or to a useless form; ruin; spoil; demolish. 2. to put an end to; extinguish’. The word in its context in CGT event C1 applies if a CGT asset is destroyed in an involuntary occurrence, such as a natural disaster, or if it happens by the actions of others over which the taxpayer has no control. It also applies if a CGT asset is destroyed in a voluntary occurrence – if, for example, it happens due to a deliberate act of the taxpayer (e.g., a taxpayer might demolish a building in the course of redeveloping a property).

5. Neither of the words ‘lost’ or ‘destroyed’, in the context of CGT event C1, contemplates an economic loss of a CGT asset.

6. Neither of the words ‘lost’ or ‘destroyed’, in the context of CGT event C1, contemplates damage to an asset that does not amount to the asset being lost or destroyed. A CGT asset must be wholly lost - not just damaged - or wholly destroyed - not just damaged - for the circumstances to be covered by CGT event C1. This is not to say, however, that CGT event C1 cannot happen to a discrete and identifiable part of a CGT asset - being a CGT asset in its own right - if the part is wholly lost or wholly destroyed and not just damaged.

Intangible assets

7. CGT event C1 does not distinguish between tangible and intangible assets. Section 104-20 refers to ‘CGT asset’ and this includes intangible CGT assets.

Commissioner of Taxation

15 December 1999

Previous draft:

Previously released as TD 1999/D91

Subject references:

asset; capital gains tax; CGT asset; CGT event; CGT event C1; CGT event C2; confiscation; destruction; destroyed; intangible CGT asset; loss; lost; voluntary loss or destruction

Legislative references:

ITAA1997 104-10; ITAA1997 104-20; ITAA1997 104-20(1); ITAA1997 104-25

ATO references:

NO 99/11446-1

BO CPL99/93

FOI Index Detail: I 1021196

ISSN: 1038 - 8982