



TD 2004/2W - Income tax: capital gains: is reflection in the 'value' of an asset sufficient to constitute reflection in its 'state' or 'nature' for the fourth element of cost base and reduced cost base (subsections 110-25(5) and 110-55(2) of the Income Tax Assessment Act 1997 and what are the implications of this issue for a shareholder that makes a non-scrip share capital contribution to a company?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 13 January 2010



Notice of Withdrawal

Taxation Determination

Income tax: capital gains: is reflection in the 'value' of an asset sufficient to constitute reflection in its 'state' or 'nature' for the fourth element of cost base and reduced cost base (subsections 110-25(5) and 110-55(2) of the *Income Tax Assessment Act 1997* and what are the implications of this issue for a shareholder that makes a non-scrip share capital contribution to a company?

Taxation Determination TD 2004/2 is withdrawn with effect from today.

1. Taxation Determination TD 2004/2 is being withdrawn following the majority decision of the Full Court of the Federal Court in *National Mutual Life Association of Australia v. Federal Commissioner of Taxation* [2009] FCAFC 96, 2009 ATC 20-124.
2. The majority rejected the Commissioner's view as set out in TD 2004/2 that capital expenditure reflected in an asset's value was not sufficient to be considered to be reflected in the asset's state or nature and form part of its reduced cost base under former paragraph 160ZH(3)(c) of the *Income Tax Assessment Act 1936* (ITAA 1936).
3. TD 2004/2 applied to the determination of the fourth element of the cost base and the reduced cost base under subsections 110-25(5) and 110-55(2) of the *Income Tax Assessment Act 1997* and the equivalent provisions in the ITAA 1936 being paragraphs 160ZH(1)(c), 160ZH(2)(c) and 160ZH(3)(c).
4. For CGT events happening on or after 1 July 2005, subsections 110-25(5) and 110-55(2) of the ITAA 1997 have been amended. There is no longer a requirement that the expenditure must be reflected in the 'state or nature' of the asset at the time of the CGT event. Therefore, a replacement Determination is not required.

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ATO references

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