TD 2005/47 - Income tax: what do the words 'can deduct' mean in the context of those provisions in Division 110 of the Income Tax Assessment Act 1997 which reduce the cost base or reduced cost base of a CGT asset by amounts you 'have deducted or can deduct', and is there a fixed point in time when this must be determined?

Taxation Determination

Income tax: what do the words 'can deduct' mean in the context of those provisions in Division 110 of the *Income Tax Assessment Act 1997* which reduce the cost base or reduced cost base of a CGT asset by amounts you 'have deducted or can deduct', and is there a fixed point in time when this must be determined?

Preamble

The number, subject heading, date of effect and paragraphs 1 to 5 of this document are a 'public ruling' for the purposes of Part IVAAA of the ***Taxation Administration Act 1953*** *and are legally binding on the Commissioner.*

Meaning of 'can deduct'

1. You 'can deduct' an amount for the purposes of a provision in Division 110 of the *Income Tax Assessment Act 1997* (ITAA 1997)[1] at a particular time if:

- the terms of the relevant deduction provision have been satisfied in respect of the amount; and
- the deduction is not prevented by the expiry of amendment periods prescribed by section 170 of the *Income Tax Assessment Act 1936* (ITAA 1936).

No fixed point in time when question to be asked

2. In the context of a provision in Division 110 of the ITAA 1997, there is no fixed point in time when the issue of what you 'can deduct' must be determined. It is not necessarily the time of the CGT event, or the time of lodging a tax return for the income year in which the CGT event happens, though these are times when the question might be asked by a taxpayer and a conclusion drawn. However, there would be nothing to prevent a taxpayer asking the question again at a later time or times and obtaining a different answer because amendment periods relevant to deducting the amounts had since expired.

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[1] Division 110 of the ITAA 1997 deals with working out the cost base and reduced cost base of a CGT asset.

3. The time of determining what you 'can deduct' can be any time when someone (for example, a taxpayer) turns their mind to what constitutes the cost base or reduced cost base of the CGT asset. It may be at any time from the time of the relevant CGT event (or, in the context of subsection 110-25(12) of the ITAA 1997, assumed CGT event). In theory, it could also be a time after the amendment period for the tax consequences of the CGT event, although the end of that period imposes a practical limitation on the ability to change the CGT outcome.

4. Thus, if a taxpayer has omitted to claim deductions for amounts which could have been deducted at the time of the CGT event but, when the omission is discovered, can no longer be deducted because the amendment period for the deduction has expired, the taxpayer can, provided they are within the amendment period for the tax consequences of the CGT event, ensure that these amounts do not reduce the CGT cost base or reduced cost base.

5. **Note:** While this Determination deals with the meaning of the words 'can deduct' in the context of provisions in Division 110 of the ITAA 1997 which refer to amounts you 'have deducted or can deduct', the meaning would also extend to provisions in Division 110 which refer to amounts a taxpayer 'has deducted or can deduct'.

Example 1

6. *Sybil acquired a property (a small shopping complex) in December 1997 which she leases commercially. The shopping complex was constructed in 1996. There is an amount of capital works expenditure in respect of the buildings which can be deducted by her under Division 43 of the ITAA 1997. (In certain circumstances, that Division allows a person to claim deductions in relation to expenditure incurred by previous owners).*

7. *Despite having the necessary information to claim the deductions, Sybil overlooked deducting any amounts under Division 43 of the ITAA 1997 for the property when completing her income tax returns for the income years ending 30 June 1998-2003.*

8. *Sybil sold the property in May 2004. In December 2004, she lodged her income tax return for the income year ended 30 June 2004. In calculating her capital gain, Sybil became aware that subsection 110-45(4) of the ITAA 1997 required her to reduce the cost base of the property by amounts that she had deducted or can deduct under Division 43.*

9. *Sybil therefore reduced the cost base of the property by the amounts that were able to be deducted under Division 43 of the ITAA 1997 for the income years ended 30 June 2001-2004 and promptly requested an amendment to her assessments for the income years ending 30 June 2001-2003 to deduct the Division 43 amounts.*

10. *The cost base must be reduced by those amounts because at the time of lodging her return for the income year ended 30 June 2004, the time periods prescribed for amending assessments still allowed for Sybil to deduct those amounts – Sybil not being a SPOR taxpayer*[2] *as defined in section 6AD of the ITAA 1936. (For each income year since she acquired the property, Sybil had received her assessment for the income year in the November immediately following the end of the income year – for example, her assessment for the year ended 30 June 2002 was received in November 2002).*

11. *Sybil is not required to reduce the cost base of the property by the amounts that she did not deduct under Division 43 of the ITAA 1997 for the income years ended 30 June 1998-2000, as she cannot deduct these amounts at the time of lodging her income tax return for the income year ended 30 June 2004 – the time periods prescribed for amending assessments for those income years having then expired.*

[2] SPOR (Shorter Period of Review) taxpayers have a shorter period of time within which their assessments can be amended: see section 6AD of the ITAA 1936.

12. *If, in December 2005, Sybil discovers that she only amended her assessments for the income years ending 30 June 2002-2003 (rather than 30 June 2001-2003), she would be out of time to deduct the amounts in respect of the year ended 30 June 2001 – the time period prescribed for amending that assessment having expired in November 2005. She can, however, request an amendment to her assessment for the income year ended 30 June 2004 to increase the cost base of the property by the amount of the Division 43 of the ITAA 1997 deduction that she can no longer deduct for the income year ended 30 June 2001.*

Date of effect

13. This Determination applies to years commencing both before and after its date of issue. However, it 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).

Commissioner of Taxation
23 November 2005

Previous draft:

TD 2005/D28

Related Rulings/Determinations:

TR 92/20

Subject references:

- amended assessments
- capital gains tax
- CGT assets
- CGT cost base
- CGT reduced cost base
- deductions and expenses
- tax assessments

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 Div 43
- ITAA 1997 Div 110
- ITAA 1997 110-25(12)
- ITAA 1997 110-45(4)
- ITAA 1936 6AD
- ITAA 1936 170

ATO references

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