

TD 2022/14 - If a non-contingent liability to pay a specified amount is included in the cost base of your CGT asset under either subsection 110-25(2) or section 112-35 of the Income Tax Assessment Act 1997 and you deduct or can deduct that amount, does subsection 110-45(2) of that Act apply?

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Status: **legally binding**

Taxation Determination

If a non-contingent liability to pay a specified amount is included in the cost base of your CGT asset under either subsection 110-25(2) or section 112-35 of the *Income Tax Assessment Act 1997* and you deduct or can deduct that amount, does subsection 110-45(2) of that Act apply?

📌 Relying on this Determination

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Determination applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Determination. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Determination.

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Ruling

1. Yes, subsection 110-45(2) of the *Income Tax Assessment Act 1997* applies such that the amount does not form part of the cost base of your CGT asset.¹
2. All legislative references in this Determination are to the *Income Tax Assessment Act 1997*.

Date of effect

3. This Determination applies both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

Commissioner of Taxation

5 October 2022

¹ This Determination does not address when a liability will be included in the cost base of your CGT asset under subsection 110-25(2) or section 112-35.

Status: **not legally binding**

Appendix – Explanation

❶ ***This Explanation is provided as information to help you understand how the Commissioner’s view has been reached. It does not form part of the binding public ruling.***

4. In principle, an item of expenditure should either be deductible for income tax purposes or included in the cost base of an underlying asset for CGT purposes, but not both.²

5. Consistently with that principle, for CGT assets acquired after 7:30 pm ACST on 13 May 1997, where you claim a deduction for expenditure, subsection 110-45(2) applies to exclude the expenditure from the CGT asset’s cost base:

Expenditure (except expenditure excluded by subsection (1B)) does *not* form part of the **cost base** to the extent that you have deducted or can deduct it for an income year, except so far as:

- (a) the deduction has been reversed by an amount being included in your assessable income for an income year by a provision of this Act (outside this Part and Part 3-3 and Division 243); or

Note: Division 20 contains some of the provisions that reverse deductions. Section 20-5 lists some others.

- (ab) the deduction is under Division 243; or
- (b) the deduction would have been so reversed apart from a provision listed in the table (relief from including a balancing change in your assessable income).

6. The context in which the word ‘expenditure’ operates in subsection 110-45(2) is one of deductibility. A non-contingent liability to pay a specified amount³ is a presently-existing liability to expenditure, even if the liability is yet to be discharged. If the non-contingent liability can be included in cost base under subsection 110-25(2) or section 112-35, and you have deducted or can deduct an amount of expenditure which it represents, then subsection 110-45(2) operates such that the amount included in cost base at the time of acquisition of the asset will not form part of the cost base, provided it does not fall under one of the listed exceptions.

7. Consequently, subsection 110-45(2) can apply to reduce the amount included in the cost base by subsection 110-25(2) or by section 112-35.

² Paragraph 6.3 of the Explanatory Memorandum to the Taxation Laws Amendment Bill (No. 2) 1998.

³ For example, a loan or other debt. It would not include an inchoate liability subject to a variety of contingencies – for example, a contractual obligation to pay a person an amount based on future market values when an event occurs.

Status: **not legally binding**

References

Previous draft:

TD 2019/D11

- ITAA 1997 110-45(2)

- ITAA 1997 112-35

Related Rulings/Determinations:

TR 2006/10

Other references:

- Explanatory Memorandum to the Taxation
Laws Amendment Bill (No. 2) 1998

Legislative references:

- ITAA 1997 110-25(2)

ATO references

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