


TD 1999/D91 - Income tax: capital gains: does the expression 'loss or destruction' for the purposes of CGT event C1 in section 104-20 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/D91 - Income tax: capital gains: does the expression 'loss or destruction' for the purposes of CGT event C1 in section 104-20 of the Income Tax Assessment Act 1997 apply to: a) a voluntary 'loss' or 'destruction'? b) intangible assets?*

This document has been finalised by TD 1999/79.



Draft Taxation Determination

Income tax: capital gains: does the expression ‘loss or destruction’ for the purposes of CGT event C1 in section 104-20 of the *Income Tax Assessment Act 1997* apply to:

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

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

Voluntary ‘loss or ‘destruction’

1. The word ‘loss’ for the purposes of CGT event C1 (about the loss or destruction of CGT assets) in section 104-20 of the *Income Tax Assessment Act 1997* does not contemplate voluntary actions. *The Macquarie Dictionary* defines ‘loss’ as ‘the accidental or inadvertent losing of something dropped, misplaced, or of unknown whereabouts; destruction or ruin’. The word in its context in CGT event C1 suggests an involuntary rather than a voluntary act.
2. The term ‘loss’ in section 104-20 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.
3. The word ‘destruction’ in section 104-20 contemplates voluntary actions. *The Macquarie Dictionary* defines the word ‘destruction’ as ‘the act of destroying; the fact or condition of being destroyed; demolition; annihilation’. The word in its context in CGT event C1 applies if a destruction is 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 destruction is 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).
4. Neither of the words ‘loss’ or ‘destruction’, in the context of CGT event C1, contemplates an economic loss of a CGT asset or damage to an asset that does not amount to the loss or destruction of the asset.

5. A CGT asset must be completely lost to the owner or completely destroyed for the circumstances to be covered by CGT event C1.

Intangible assets

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

Your comments

7. **We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.**

Comments by Date: 24 September 1999
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Commissioner of Taxation

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Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

Subject references:

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

Legislative references:

ITAA 1997 102-25(1); ITAA 1997 104-20; ITAA 1997 104-25; ITAA 1997 116-25; ITAA 1997 116-30

Case references:

ATO references:

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