



TD 2011/D5 - Income tax: will the gain or loss resulting from the expiration, sale, termination or exercise of a hedging financial arrangement to which a hedging financial arrangement election applies be determined and allocated in accordance with subsections 230-300(2) and 230-300(3) of the Income Tax Assessment Act 1997 where that expiration, sale, termination or exercise happens before an occurrence of an event listed in the table in section 230-305 of the Income Tax Assessment Act 1997?

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This document has been finalised by TD 2012/13.

 There is a Compendium for this document: TD 2012/13EC .



Draft Taxation Determination

Income tax: will the gain or loss resulting from the expiration, sale, termination or exercise of a hedging financial arrangement to which a hedging financial arrangement election applies be determined and allocated in accordance with subsections 230-300(2) and 230-300(3) of the *Income Tax Assessment Act 1997* where that expiration, sale, termination or exercise happens before an occurrence of an event listed in the table in section 230-305 of the *Income Tax Assessment Act 1997*?

❶ This publication provides you with the following level of protection:

This publication is a draft for public comment. It represents the Commissioner's preliminary view about the way in which a relevant taxation provision applies, or would apply to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

You can rely on this publication (excluding appendixes) to provide you with protection from interest and penalties in the following way. If a statement turns out to be incorrect and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the publication in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

Ruling

1. Yes. A gain or loss resulting from the expiration, sale, termination or exercise (collectively 'Cessation Events') in relation to a hedging financial arrangement to which a hedging financial arrangement election applies will be determined and allocated in accordance with subsections 230-300(2) and 230-300(3) of the *Income Tax Assessment Act 1997* (ITAA 1997),¹ where the Cessation Event happens before an occurrence of an event listed in the table in section 230-305.

¹ All legislative references are to the ITAA 1997 unless otherwise indicated.

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Example

2. *A Co has previously made the election to apply the hedging financial arrangements method to gains and losses from its hedging financial arrangements under subsection 230-315(1). A Co has not made any other tax-timing method election under Division 230.*
3. *A Co owns a share in Risky Co. The Risky Co share is a CGT asset which is subject to Parts 3-1 and 3-3.*
4. *A Co starts to have a hedging financial arrangement in 2011 to hedge a risk that it has in relation to its share in Risky Co. All of the requirements in Subdivision 230-E are satisfied for that hedging financial arrangement to be one to which the hedging financial arrangement election applies.*
5. *At a time prior to the disposal of the share in Risky Co, or the occurrence of any other event listed in the table in section 230-305, A Co terminates the hedging financial arrangement.*
6. *The cessation of A Co's hedging financial arrangement is not itself an event listed in the table in section 230-305. Subsection 230-300(5) therefore does not apply and the termination results in A Co working out its gain or loss from the hedging financial arrangement under subsection 230-300(2).*
7. *In accordance with subsection 230-300(3), the gain or loss from the hedging financial arrangement is to be allocated to the income year in which the gain or loss on the Risky Co share is recognised by A Co, for example, when the share is disposed of.*

Date of effect

8. *When the final Determination is issued, it is proposed to apply 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 77 of Taxation Ruling TR 2006/10).*

Commissioner of Taxation

1 June 2011

Appendix 1 – Explanation

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

Explanation

9. The happening of a Cessation Event in respect of a hedging financial arrangement to which a hedging financial arrangement election (a hedging election) applies is contemplated by subsection 230-300(2) as having consequences under Subdivision 230-E where that Cessation Event occurs prior to the happening of an event that is listed in the table in section 230-305.

10. Upon the happening of a Cessation Event it is possible to work out the overall gain or loss you make from a hedging financial arrangement to which a hedging election applies.

11. The table in section 230-305 lists events which may happen in relation to a hedging financial arrangement to which a hedging election applies, and sets out the income year(s) to which a gain or loss from such an arrangement is to be allocated upon the occurrence of a listed event. Subsection 230-300(5) operates to quantify that gain or loss.

12. A Cessation Event affecting a hedging financial arrangement to which a hedging election applies is not an event that is listed in the table in section 230-305. The context of subsection 230-300(5) – which deems a cessation and reacquisition of a hedging financial arrangement where an event listed in the table in section 230-305 occurs – indicates that having the arrangement must survive the happening of the event for subsection 230-300(5) to apply. Accordingly, an actual cessation of the hedging financial arrangement is not itself an event within that table.

13. There are clear indicators in Subdivision 230-E that a Cessation Event will result in the allocation of the gain or loss from a hedging financial arrangement to which a hedging election applies. Note 1 to subsection 230-300(3) provides that the allocation of a gain or loss from a hedging financial arrangement is:

... capable of extending to income years after you cease to have the hedging financial arrangement (see subsection 230-360(3)).

14. Subsection 230-360(3) clarifies the allocation of such a resulting gain or loss, providing that:

To avoid doubt, the income years over which your gain or loss is to be allocated may include an income year that starts after you cease to have the *hedging financial arrangement.

15. Where a Cessation Event happens to a hedging financial arrangement to which a hedging election applies before an event that is listed in the table in section 230-305 has occurred, the resulting gain or loss from that hedging financial arrangement is determined under subsection 230-300(2). Furthermore, under subsection 230-300(3), that gain or loss is allocated over income years according to the determining basis properly identified in subsection 230-360(1).

Appendix 2 – Your comments

16. You are invited to comment on this draft Determination. Please forward your comments to the contact officer by the due date.

17. A compendium of comments is also prepared for the consideration of the relevant Rulings Panel or relevant tax officers. An edited version (names and identifying information removed) of the compendium of comments will also be prepared to:

- provide responses to persons providing comments; and
- publish on the Australian Taxation Office website at www.ato.gov.au

Please advise if you do not want your comments included in the edited version of the compendium.

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- cessation event
- financial arrangement
- hedging
- taxation of financial arrangements

- ITAA 1997
- ITAA 1997 Pt 3-1
- ITAA 1997 Pt 3-3
- ITAA 1997 Div 230
- ITAA 1997 Subdiv 230-E
- ITAA 1997 230-300(2)
- ITAA 1997 230-300(3)
- ITAA 1997 230-305
- ITAA 1997 230-315(1)
- ITAA 1997 230-360(1)
- ITAA 1997 230-360(3)

Legislative references:

ATO references

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