TD 2012/D7W - Withdrawal - Income tax: does a receiver who disposes of a CGT asset as the agent for a debtor have an obligation under section 254 of the Income Tax Assessment Act 1936 to retain from sale proceeds sufficient money to pay tax which is or will become due as a result of disposing of that asset?

This cover sheet is provided for information only. It does not form part of *TD 2012/D7W - Withdrawal - Income tax: does a receiver who disposes of a CGT asset as the agent for a debtor have an obligation under section 254 of the Income Tax Assessment Act 1936 to retain from sale proceeds sufficient money to pay tax which is or will become due as a result of disposing of that asset?*

Notice of Withdrawal

Draft Taxation Determination

Income tax: does a receiver who disposes of a CGT asset as the agent for a debtor have an obligation under section 254 of the *Income Tax Assessment Act 1936* to retain from sale proceeds sufficient money to pay tax which is or will become due as a result of disposing of that asset?

Draft Taxation Determination TD 2012/D7 is withdrawn with effect from today.

1. The Draft Determination concluded that a receiver who is an agent of the debtor is required by paragraph 254(1)(d) of the *Income Tax Assessment Act 1936* (ITAA 1936) to retain from the sale proceeds that come to them in the capacity of agent sufficient money to pay tax which is or will become due as a result of disposing of a Capital Gains Tax (CGT) asset. This Draft Determination follows from TD 2012/D6 which concluded the phrase 'tax which is or will become due' in paragraph 254(1)(d) of the *Income Tax Assessment Act 1936* (ITAA 1936) is not restricted to tax that has been assessed, and includes tax that will become due when an assessment is made.

2. The Draft Determination is being withdrawn following the decision of the High Court in *Commissioner of Taxation v Australian Building Systems Pty Ltd (in liquidation); Commissioner of Taxation v Muller* [2015] HCA 48 and the withdrawal of TD 2012/D6. This is because a trustee or agent will have no obligation to retain money to pay tax under paragraph 254(1)(d) of the ITAA 1936 until an assessment has been issued in respect of the relevant income, profits or gains.

3. The Commissioner's view on the issues covered by TD 2012/D7 is currently being considered in light of the High Court decision in *Commissioner of Taxation v. Australian Building Systems Pty Ltd (in liquidation); Commissioner of Taxation v. Muller* [2015] HCA 48. The Commissioner will look to provide a replacement public advice product for TD 2012/D7 or to test the Commissioner's view in an appropriate case.

Commissioner of Taxation
23 March 2016

ATO references

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