


TD 96/D14 - Income tax: capital gains: if a taxpayer receives compensation for the loss or destruction of his or her motor vehicle, or for permanent damage to his or her motor vehicle, does the receipt have any CGT consequences?

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This document has been finalised by TD 97/5.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: capital gains: if a taxpayer receives compensation for the loss or destruction of his or her motor vehicle, or for permanent damage to his or her motor vehicle, does the receipt have any CGT consequences?

1. No. Compensation received wholly for the loss or destruction of the vehicle, or for any permanent damage to the vehicle, does not fall within Part IIIA of the *Income Tax Assessment Act 1936* ('the Act'), and has no CGT consequences. This includes any amount received under an insurance policy in respect of the vehicle which is wholly attributable to the loss or destruction of the vehicle, or for any permanent damage to the vehicle.

2. A motor vehicle is an 'exempt asset' as that term is used in Taxation Ruling TR 95/35 (see paragraph 3 of TR 95/35). As explained in paragraphs 14 and 66 to 68 of TR 95/35, compensation received for permanent damage to, or a permanent reduction in value of, an underlying asset which is an exempt asset has no CGT consequences.

3. We consider that, while the right to seek compensation is an asset for the purposes of Part IIIA, it is appropriate to 'look through' that asset to the underlying exempt asset which has triggered the receipt of the compensation.

Note 1: a motor vehicle, for the purposes of this Determination, is a vehicle of a kind covered by paragraph 82AF(2)(a) of the Act.

Note 2: any related or additional claim for the taxpayer's personal injury or for the damage to any other asset of the taxpayer as a result of a motor vehicle accident may fall within Part IIIA or other provisions of the Act. Taxation Ruling TR 95/35 details the CGT consequences generally of receiving an amount of compensation.

Note 3: permanent damage, for the purposes of this Determination, does not mean damage which is everlasting or eternal, but rather means damage of a kind which requires some action to repair or remedy the damage.

Example 1

David is involved in a motor vehicle accident, which results in slight damage to his vehicle. He accepts \$1,500 from the driver of the other vehicle as full compensation for the damage to David's vehicle. There are no CGT consequences for the receipt by David of the compensation.

Example 2

Joe is involved in a motor vehicle accident in which his vehicle is destroyed and he suffers significant personal injury. His insurer pays \$12,500 to Joe to cover the cost of replacing his vehicle, and also pays his hospital and medical expenses as a result of the accident. There are no CGT consequences in respect of the \$12,500 received for the destruction of his vehicle. (The CGT provisions apply to grant a full exemption for the amounts received from the insurer as a result of his personal injury.)

Example 3

Susan operates a craft shop in a small shopping centre, and is involved in an accident in the loading dock of the centre. The accident causes significant damage to her vehicle, and also destroys a number of samples of her craft work that Susan was about to display in her shop. She receives compensation of \$25,000 in respect of the accident, \$10,500 of which relates to the costs of repairing her vehicle. There are no CGT consequences for the compensation of \$10,500 which relates to the damage to her vehicle. (The compensation received for her craft samples must be considered separately under the Act.)

Commissioner of Taxation11 September 1996

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