

TD 98/D3 - Income tax: capital gains: may initial repair expenditure incurred after the acquisition of an asset be included in the cost base of the asset?

 This cover sheet is provided for information only. It does not form part of *TD 98/D3 - Income tax: capital gains: may initial repair expenditure incurred after the acquisition of an asset be included in the cost base of the asset?*

This document has been finalised by TD 98/19.

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: may initial repair expenditure incurred after the acquisition of an asset be included in the cost base of the asset?

1. Yes. Initial repair expenditure incurred on an asset after its acquisition is included in the cost base of the asset under paragraph 160ZH(1)(c) of the *Income Tax Assessment Act 1936*.
2. We accept that initial repair expenditure satisfies the requirements of that paragraph because:
 - (a) initial repair expenditure is expenditure of a capital nature: see paragraph 59 of Taxation Ruling TR 97/23;
 - (b) initial repair expenditure may be incurred for the purpose of enhancing the value of the asset. A repair enhances the value of the asset repaired because it restores the efficiency of function of the asset. Repair of an asset also improves to some extent the appearance, form, state or condition it was in immediately before repair. A minor and incidental degree of improvement may still be a repair; and
 - (c) initial repair expenditure incurred in enhancing the value of the asset would be reflected in the state or nature of the asset at the time of its disposal. For example, a taxpayer would be able to show, at that time, that the initial repair expenditure prevented deterioration of the asset or had some other impact on its final state or nature.
3. This view of the law applies whether the asset is acquired by purchase or is a leasehold interest.
4. If initial repair expenditure is apportioned to allow a deduction under section 25-10 of the *Income Tax Assessment Act 1997* for a part of the expenditure that remedies deterioration of the asset (see paragraphs 63 to 66 of TR 97/23), the cost base of the asset may only include the expenditure to the extent that it is not deductible under section 25-10.

Technical note

5. The expression 'initial repair' is used in this Determination in the same sense that it is used in paragraph 5 of TR 97/23. A repair is not an 'initial repair' simply because it is the first repair made to an asset after it is acquired. It is an 'initial repair' only if repair is necessary when the asset is acquired because the asset has defects, damage or deterioration or is not in good order and suitable for use in the way intended. To be an 'initial repair' the work done to the asset must be a 'repair' in the ordinary meaning of the word (that is, the remedying or making good of defects in,

damage to, or deterioration of, the asset to restore its efficiency of function without changing its character); it must not constitute an improvement, addition or alteration nor be a renewal, restoration or reconstruction of the entirety of the asset.

Your comments

6. If you want to comment on this draft Determination, please send your comments by **Friday 13 March 1998** to:

Contact Officer: Glenn Davies
Telephone: (07) 321 38527
Facsimile: (07) 321 38905
Address: Mr Glenn Davies
Capital Gains Tax Cell, LB&I
Australian Taxation Office
PO Box 9990
CHERMSIDE QLD 4032.

Commissioner of Taxation

11 February 1998

FOI INDEX DETAIL: [Reference No.](#)

[Related Determinations:](#)

[Related Rulings:](#) TR 97/23

[Subject Ref:](#) assets; capital assets; CGT asset issues; CGT cost base; cost base; expense apportionment; initial repair; initial repair expenses; producing assessable income; repairs and maintenance expenses

[Legislative Ref:](#) ITAA36 160ZH(1)(c); ITAA97 25-10

[Case Ref:](#)

[ATO Ref:](#) NAT 98/457-4; CGT Cell (CGTD98_1)

ISSN 1038 - 8982