TD 2004/30 - Income tax: capital gains tax: do input tax credits reduce a CGT asset's cost base and reduced cost base, worked out under sections 110-25 and 110-55 of the Income Tax Assessment Act 1997, and other equivalent amounts used in working out a capital gain or loss from a CGT event that happens in respect of the asset on or before 19 February 2004?

Taxation Determination

Income tax: capital gains tax: do input tax credits reduce a CGT asset's cost base and reduced cost base, worked out under sections 110-25 and 110-55 of the *Income Tax Assessment Act 1997*, and other equivalent amounts used in working out a capital gain or loss from a CGT event that happens in respect of the asset on or before 19 February 2004?

Preamble

*The number, subject heading, date of effect and paragraph 1 to paragraph 3 of this document are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

1. In working out a capital gain or loss from a CGT event that happens in respect of a CGT asset on or before 19 February 2004, the first, second and third elements of the asset's cost base are reduced by relevant input tax credits if the asset was acquired after 7.30 pm (ACT legal time) on 13 May 1997 (subsections 110-45(3A) and 110-50(3A) of the *Income Tax Assessment Act 1997* (ITAA 1997)).

2. As there are no other specific provisions dealing with input tax credits and CGT cost base and reduced cost base for CGT events that happen on or before 19 February 2004, then in working out a capital gain or loss from such events the following are *not* reduced by relevant input tax credits:

- the fourth and fifth elements of the cost base of a CGT asset acquired after 7.30 pm (ACT legal time) on 13 May 1997;
- any element of the cost base of a CGT asset acquired before that time; and
- any element of the reduced cost base of a CGT asset, regardless of when it was acquired.

3. Also, if a capital gain or loss is worked out from a CGT event that happens on or before 19 February 2004 by reference to an amount other than cost base or reduced cost base, that other amount is not reduced by relevant input tax credits. For example, a capital gain or loss is worked out under CGT event D1 in section 104-35 of the ITAA 1997 by reference to incidental costs.

Explanation

4. An entity that makes a creditable acquisition or a creditable importation is entitled to an input tax credit. The amount of the input tax credit is equal to the GST payable on the creditable acquisition or creditable importation. See subsection 995-1(1) of the ITAA 1997 and section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

5. Amendments to the ITAA 1997 by the *Tax Laws Amendment (2004 Measures No. 1) Act 2004* ensure that all elements of the cost base and reduced cost base of a CGT asset, and other equivalent amounts used in working out a capital gain or loss, are reduced by relevant input tax credits, regardless of when the asset was acquired (section 103-30 of the ITAA 1997). However, those amendments only apply to CGT events that happen after 19 February 2004. Therefore, this determination deals with working out a capital gain or loss for assets to which CGT events happen on or before that date.

6. In working out a capital gain or loss from CGT events that happen on or before 19 February 2004, there are specific provisions stating that the first, second and third elements of the cost base of an asset acquired after 7.30 pm (ACT legal time) on 13 May 1997 are reduced by relevant input tax credits (subsections 110-45(3A) and 110-50(3A) of the ITAA 1997).

7. However, there are no specific provisions covering the other elements of cost base or the cost base of assets acquired before 7.30 pm on 13 May 1997 or reduced cost base. There is also no specific provision covering amounts equivalent to cost base and reduced cost base. It is also considered that none of them is reduced by relevant input tax credits under a more general provision of the ITAA 1997 such as paragraph 17-15(b) (which excludes amounts equal to input tax credits from the calculation of an amount such as net profit included in assessable income) or subsections 110-45(3) and 110-50(3) (which reduce all elements of cost base by recouped expenditure).

8. An established principle of statutory interpretation is that specific provisions override general provisions to the extent of any inconsistency. The specific nature of subsections 110-45(3A) and 110-50(3A) of the ITAA 1997 (which reduce only some elements of cost base by relevant input tax credits and even then only for assets acquired after a certain date) means it is inappropriate to interpret other more general provisions as requiring cost base, reduced cost and equivalent amounts to be reduced by input tax credits in circumstances not covered by the specific provisions.

9. Further, it is clear that the rule in paragraph 17-15(b) of the ITAA 1997 was not intended to apply in the context of the capital gains tax provisions. Instead, specific rules were inserted in the capital gains tax provisions (and in other provisions, such as those relating to trading stock and depreciating assets) to achieve a result consistent with that provided by section 17-15. The Explanatory Memorandum to the Bill which became *A New Tax System (Indirect Tax and Consequential Amendments) Act 1999* that introduced subsections 110-45(3A) and 110-50(3A) of the ITAA 1997 states (*emphasis added*):

> 3.31 This Bill will amend the disposal proceeds and cost base rules ***in the CGT provisions*** in a way consistent with the basic rules for the treatment of assessable amounts and deductions.

Example

10. *A taxpayer purchased a vacant block of land after 19 September 1985. The taxpayer registered for GST and built a commercial building for rent. The land is not trading stock of the taxpayer.*

11. *The taxpayer incurred construction costs (including GST) and claimed the associated input tax credits. The taxpayer incurred legal fees (including GST) of a capital nature in defending their title to the land and again claimed the associated input tax credits.*

12. *In December 2003, the taxpayer entered into a contract to sell the land and, at that time, the construction expenditure was reflected in its state or nature. The contract settled in January 2004. CGT event A1 in section 104-10 therefore happens in December 2003 (paragraph 104-10(3)(a)).*

13. *Because CGT event A1 happens on or before 19 February 2004, in working out a capital gain or loss from the event:*

- *the GST-inclusive amount of the construction costs (less the amount claimed as a capital works deduction under Division 43 of the ITAA 1997) is included in the fourth element of the land's cost base and reduced cost base; and*
- *the GST-inclusive amount of the legal fees is included in the fifth element of the land's cost base and reduced cost base.*

Note: Because this example relates to the fourth and fifth elements of cost base, the outcome will be the same regardless of whether the taxpayer acquired the land before or after 7.30 pm (ACT legal time) on 13 May 1997. However, had the taxpayer sought to include GST input tax credits in the first, second or third elements of cost base they could only have done so if they had acquired the land before 7.30 pm (ACT legal time) on 13 May 1997.

Date of Effect

14. This Determination applies to years commencing both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Commissioner of Taxation
14 July 2004

Previous draft:

TD 2004/D3

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/16

Subject references:

- capital gains tax
- CGT cost base
- CGT reduced cost base
- goods and services tax
- GST input tax credits & creditable acquisitions
- input tax credits

Legislative references:

- GST Act 1999 195-1
- ITAA 1997 17-15
- ITAA 1997 17-15(b)
- ITAA 1997 Div 43
- ITAA 1997 103-30
- ITAA 1997 104-10
- ITAA 1997 104-10(3)(a)
- ITAA 1997 104-35
- ITAA 1997 110-25
- ITAA 1997 110-45(3)
- ITAA 1997 110-45(3A)
- ITAA 1997 110-50(3)
- ITAA 1997 110-50(3A)
- ITAA 1997 110-55

- ITAA 1997 995-1(1)
- TAA 1953 Pt IVAAA
- Tax Laws Amendment (2004 Measures No. 1) Act 2004

Other references:

- Explanatory Memorandum to the A New Tax System (Indirect Tax and Consequential Amendments) Bill 1999

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