


***TD 2006/78A3 - Addendum - Income tax: capital gains: are there any circumstances in which the premises used in a business of providing accommodation for reward may satisfy the active asset test in section 152-35 of the Income Tax Assessment Act 1997 notwithstanding the exclusion in paragraph 152-40(4)(e) of the Income Tax Assessment Act 1997 for assets whose main use is to derive rent?***

 This cover sheet is provided for information only. It does not form part of *TD 2006/78A3 - Addendum - Income tax: capital gains: are there any circumstances in which the premises used in a business of providing accommodation for reward may satisfy the active asset test in section 152-35 of the Income Tax Assessment Act 1997 notwithstanding the exclusion in paragraph 152-40(4)(e) of the Income Tax Assessment Act 1997 for assets whose main use is to derive rent?*

 View the [consolidated version](#) for this notice.



---

## Addendum

---

### Taxation Determination

Income tax: capital gains - are there any circumstances in which the premises used in a business of providing accommodation for reward may satisfy the active asset test in section 152-35 of the *Income Tax Assessment Act 1997* notwithstanding the exclusion in paragraph 152-40(4)(e) of the *Income Tax Assessment Act 1997* for assets whose main use is to derive rent?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Determination TD2006/78 to include a reference to *Tingari Village North Pty Ltd v. Commissioner of Taxation* [2010] AATA 233 and the associated Decision Impact Statement (2008/4646 & 2008/4647), which notes the decision is consistent with Taxation Determination TD 2006/78.

#### TD2006/78 is amended as follows:

##### 1. Paragraph 17A

Omit the paragraph; substitute:

17A. The amendments applied to this consolidated Determination apply to CGT events happening from the date of issue of TD2006/78A3.

##### 2. Paragraph 23

After '*Radaich v. Smith* (1959) 101 CLR 209' insert '*Tingari Village North Pty Ltd v. Commissioner of Taxation* [2010] AATA 233 at paragraphs 44-46, 2010 ATC 10-131, 78 ATR 693 and associated Decision Impact Statement 2008/4646 & 2008/4647.'

# TD 2006/78

Page 2 of 2

---

## 3. Case references

Insert:

- Tingari Village North Pty Ltd v. Commissioner of Taxation [2010] AATA 233, 2010 ATC 10-131, 78 ATR 693

## 4. Other references

Insert:

- Decision Impact Statement on Tingari Village North Pty Ltd v. Commissioner of Taxation – DIS 2008/4646 & 2008/4647

This Addendum applies with effect from today.

---

**Commissioner of Taxation**  
19 December 2012

---

ATO references

NO: 1-2NIWPML

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ small business relief - 'active asset test'  
Income Tax ~~ Capital Gains Tax ~~ small business relief - basic conditions for relief