

TD 2012/13 - Income tax: is the gain or loss resulting from the expiration, sale, termination or exercise of a hedging financial arrangement to which a hedging financial arrangement election applies, determined and allocated in accordance with subsections 230-300(2) and 230-300(3) of the Income Tax Assessment Act 1997?

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Taxation Determination

Income tax: is the gain or loss resulting from the expiration, sale, termination or exercise of a hedging financial arrangement to which a hedging financial arrangement election applies, determined and allocated in accordance with subsections 230-300(2) and 230-300(3) of the *Income Tax Assessment Act 1997*?

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This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. Yes. A gain or loss resulting from the expiration, sale, termination or exercise (collectively 'Cessation Events') of a hedging financial arrangement to which a hedging financial arrangement election applies, will be determined and allocated in accordance with subsections 230-300(2) and 230-300(3) of the *Income Tax Assessment Act 1997*.¹

¹ All subsequent legislative references are to the *Income Tax Assessment Act 1997* unless otherwise indicated.

Example

2. *A Co has previously made the election to apply the hedging financial arrangements method to gains and losses from its hedging financial arrangements under subsection 230-315(1). A Co has not made any other tax-timing method election under Division 230.*
3. *A Co owns a share in Risky Co. The Risky Co share is a CGT asset which is subject to Parts 3-1 and 3-3 of the ITAA 1997.*
4. *A Co starts to have a hedging financial arrangement in the 2010-11 income year to hedge a risk that it has in relation to its share in Risky Co. All of the requirements in Subdivision 230-E are satisfied for that hedging financial arrangement to be one to which the hedging financial arrangement election applies.*
5. *At a time prior to the disposal of the share in Risky Co, or the occurrence of any other event listed in the table in section 230-305, A Co terminates the hedging financial arrangement.*
6. *The cessation of A Co's hedging financial arrangement is not itself an event listed in the table in section 230-305. Subsection 230-300(5) therefore does not apply and the termination results in A Co working out its gain or loss from the hedging financial arrangement under subsection 230-300(2).*
7. *In accordance with subsection 230-300(3), and subject to subsection 230-300(4), the gain or loss from the hedging financial arrangement is to be allocated to the income year in which the gain or loss on the Risky Co share is recognised by A Co, for example, when the share is disposed of.*

Date of effect

8. This Determination applies to years of income commencing both before and after its date of issue. However, this Determination will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Determination (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

9. The happening of a Cessation Event in respect of a hedging financial arrangement to which a hedging financial arrangement election (a hedging election) applies is contemplated by subsection 230-300(2) as having consequences under Subdivision 230-E where that Cessation Event occurs prior to the happening of an event that is listed in the table in section 230-305.

10. Upon the happening of a Cessation Event it is possible to work out the overall gain or loss you make from a hedging financial arrangement to which a hedging election applies.

11. The table in section 230-305 lists events which may happen in relation to a hedging financial arrangement to which a hedging election applies, and sets out the income year(s) to which a gain or loss from such an arrangement is to be allocated upon the occurrence of a listed event. Subsection 230-300(5) operates to quantify that gain or loss.

12. A Cessation Event affecting a hedging financial arrangement to which a hedging election applies is not an event that is listed in the table in section 230-305. The context of subsection 230-300(5) – which deems a cessation and reacquisition of a hedging financial arrangement where an event listed in the table in section 230-305 occurs – indicates that having the arrangement must survive the happening of the event for subsection 230-300(5) to apply. Accordingly, an actual cessation of the entire hedging financial arrangement is not itself something contemplated as an event within that table.

13. That is not to say that a partial cessation of a hedging financial arrangement could not give rise to an event in the table in section 230-305 – for example, where hedging effectiveness criteria were failed as a result of that partial cessation.

14. There are clear indicators in Subdivision 230-E that a Cessation Event will result in the allocation of the gain or loss from a hedging financial arrangement to which a hedging election applies. Note 1 to subsection 230-300(3) provides that the allocation of a gain or loss from a hedging financial arrangement is:

... capable of extending to income years after you cease to have the hedging financial arrangement (see subsection 230-360(3)).

15. Subsection 230-360(3) clarifies the allocation of such a resulting gain or loss, providing that:

To avoid doubt, the income years over which your gain or loss is to be allocated may include an income year that starts after you cease to have the *hedging financial arrangement.

16. Where a Cessation Event happens to a hedging financial arrangement to which a hedging election applies, the resulting gain or loss from that hedging financial arrangement is determined under subsection 230-300(2). Furthermore, under subsection 230-300(3), that gain or loss is allocated over income years according to the basis properly identified in the determination referred to in section 230-360.

References

Previous draft:

TD 2011/D5

Related Rulings/Determinations:

TR 2006/10

Subject references:

- cessation event
- expiration, sale, termination or exercise
- hedging financial arrangement election
- hedging financial arrangements
- taxation of financial arrangements CoE

Legislative references:

- TAA 1953
- ITAA 1997
- ITAA 1997 Pt 3-1

- ITAA 1997 Pt 3-3
- ITAA 1997 Div 230
- ITAA 1997 Subdiv 230E
- ITAA 1997 230-300(2)
- ITAA 1997 230-300(3)
- ITAA 1997 230-300(4)
- ITAA 1997 230-300(5)
- ITAA 1997 230-305
- ITAA 1997 230-315(1)
- ITAA 1997 230-360
- ITAA 1997 230-360(3)

Other references:

- Australian Accounting Standard AASB 139
Financial Instruments: Recognition and
Measurement

ATO references

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