


TD 2017/10 - Income tax: capital gains: can costs that you incur after a CGT event happens be 'related to' that CGT event for the purpose of working out your incidental costs?

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Taxation Determination

Income tax: capital gains: can costs that you incur after a CGT event happens be 'related to' that CGT event for the purpose of working out your incidental costs?

1 This publication provides you with the following level of protection:

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. Under paragraph 110-35(1)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997)¹, a cost can relate to a CGT event even if you incur it after the CGT event happens.

Example

2. Luke sells his business on 1 January 2016. Under the contract of sale, Luke receives \$5,000 for the goodwill of the business. A few months later, he is sued by the purchaser for misrepresenting the value of the goodwill. Luke incurs legal fees of \$1,000 to defend the action. The legal fees of \$1,000 are an incidental cost of Luke's CGT asset because the fees relate to the disposal of his goodwill.

¹ All legislative references are to the ITAA 1997 unless otherwise specified.

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Date of effect

3. This Determination applies to income years 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).

Commissioner of Taxation

5 April 2017

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.*

4. Incidental costs are the second element of the cost base of a CGT asset.² Incidental costs alone are also used to determine the capital loss or capital gain made from some CGT events where the rules about cost base are not relevant.³

5. There are ten types of costs set out in section 110-35.⁴ A cost must fall into at least one of those types before it can qualify as an incidental cost.

6. For these costs (except for one type dealing with intra-group transactions)⁵, a requirement is that you have incurred the cost:

- to acquire a CGT asset (paragraph 110-35(1)(a)), or
- it relates to a CGT event (paragraph 110-35(1)(b)).

7. The expression 'relate to' is construed broadly.⁶ Therefore, your costs that relate to a CGT event for the purposes of paragraph 110-35(1)(b) may include incidental costs even if you incurred them after the CGT event happens.

² See subsection 110-25(3).

³ See CGT events D1, E9 and H2.

⁴ Subsections 110-35(2)–(11).

⁵ Subsection 110-35(10) (concerning the head company of a consolidated or MEC group).

⁶ *Narain v. Parnell* (1986) 9 FCR 479; (1986) 64 ALR 561.

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Previous Rulings/Determinations:

TD 23

Legislative references:

- ITAA 1997
- ITAA 1997 110-25(3)
- ITAA 1997 110-35
- ITAA 1997 110-35(1)(a)
- ITAA 1997 110-35(1)(b)

- ITAA 1997 110-35(2)
- ITAA 1997 110-35(3)
- ITAA 1997 110-35(4)
- ITAA 1997 110-35(5)
- ITAA 1997 110-35(6)
- ITAA 1997 110-35(7)
- ITAA 1997 110-35(8)
- ITAA 1997 110-35(9)
- ITAA 1997 110-35(10)
- ITAA 1997 110-35(11)
- TAA 1953

Cases relied on:

- Narain v. Parnell (1986) 9 FCR 479;
(1986) 64 ALR 561

ATO references

NO: 1-A61P118

ISSN: 2205-6211

BSL: TCN

ATOlaw topic: Income tax ~ Capital gains tax ~ CGT assets ~ General

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