

TD 98/19 - Income tax: capital gains: may initial repair expenditure incurred after the acquisition of a CGT asset be included in the relevant cost base of the asset?

 This cover sheet is provided for information only. It does not form part of *TD 98/19 - Income tax: capital gains: may initial repair expenditure incurred after the acquisition of a CGT asset be included in the relevant cost base of the asset?*

Taxation Determination

Income tax: capital gains: may initial repair expenditure incurred after the acquisition of a CGT asset be included in the relevant cost base of the asset?

Preamble

The number, subject heading, date of effect and paragraphs 1 (including the Note) to 5 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is binding on the Commissioner.

Date of effect

Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination 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 issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Yes. We consider that initial repair expenditure incurred on a CGT asset after its acquisition is included in the fourth element of the relevant cost base of the asset (about capital expenditure to increase an asset's value) under subsection 110-25(5) (cost base) or subsection 110-55(2) (reduced cost base) of the *Income Tax Assessment Act 1997* ('the 1997 Act'). We consider that initial repair expenditure does not satisfy any other cost base, or reduced cost base, element in sections 110-25 and 110-55.

(Note: These views also apply in relation to the interpretation of cost base (paragraph 160ZH(1)(c)); indexed cost base (paragraph 160ZH(2)(c)); and reduced cost base provisions (paragraph 160ZH(3)(c)) in the *Income Tax Assessment Act 1936* ('the 1936 Act')).

2. We accept that initial repair expenditure satisfies the requirements of the provisions referred to above because:

- (a) initial repair expenditure is capital expenditure, or expenditure of a capital nature: see paragraph 59 of Taxation Ruling TR 97/23 (about deductibility of repairs);
- (b) initial repair expenditure may be incurred to increase a CGT asset's value. 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 to increase the CGT asset's value would be reflected in the state or nature of the asset at the time of the CGT event. 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. It is not a requirement of the provisions that the value of the expenditure be reflected in the capital proceeds for the CGT event.

3. Our view of the law applies whether the CGT 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 (about deductibility of repairs) for a part of the expenditure that remedies deterioration of the asset (see paragraphs 63 to 66 of TR 97/23), the relevant cost base of the CGT asset may only include the expenditure to the extent that it is not deductible under section 25-10. The same approach applies in relation to deductions apportioned under section 53 of the 1936 Act.

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 be an improvement, addition or alteration nor be a renewal, restoration or reconstruction of the entirety of the asset (although a minor or incidental degree of improvement may still be a repair).

Commissioner of Taxation

5 August 1998

FOI INDEX DETAIL: [Reference No.](#) I 1017651

Previously issued as Draft TD 98/D3

[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:](#) ITAA97 25-10; ITAA97 110-25(5); ITAA 97 110-55(2); ITAA36 53; ITAA36 160ZH(1)(c); ITAA36 160ZH(2)(c); ITAA36 160ZH(3)(c)

[Case Ref:](#)

[ATO Ref:](#) NAT 98/457-4; CGT Cell (CGTTD98_1)

ISSN 1038 - 8982