TD 31 - Capital Gains: How are insurance policy proceeds treated when received in respect of lost or destroyed assets?

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

CGT Determination Number 31

Capital Gains: How are insurance policy proceeds treated when received in respect of lost or destroyed assets?

Determination

1. The entire loss or destruction of an asset, or loss or destruction of part of an asset, constitutes a disposal of that asset, or part of that asset (section 160N).

2. Where an asset, or part of an asset is lost or destroyed, any proceeds received by a taxpayer under an insurance policy in respect of the loss or destruction are taken to be amounts of money received "as a result of or in respect of" the disposal of the asset or part of that asset (section 160ZD). If an asset, or part of an asset was acquired before 20 September 1985, no part of the proceeds received in relation to that asset or part of that asset, would be subject to CGT.

3. Similarly, where a motor vehicle of the type referred to in section 160A is lost or destroyed, any insurance recovery will be consideration in respect of the disposal of that motor vehicle, and so not subject to CGT.

Example:

A taxpayer company acquires ownership of a newly constructed building on 1 July 1986.

The cost base of the building is $10 million and the building is treated as a separate asset for CGT purposes.

The building was subsequently destroyed by fire and the taxpayer lodged a claim under an insurance policy. At the time of acquisition, the taxpayer entered into an insurance agreement that would cover the taxpayer for the replacement cost of the building, The replacement cost at date of destruction is $18 million.

The insurance payout of $18 million is taken to be the consideration on disposal of the building.

Rollover relief under section 160ZZK may be available where a replacement asset is acquired with the insurance proceeds (CGT Determination No. 4).

COMMISSIONER OF TAXATION
28 November 1991

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