TR 2002/10 - Income tax: capital gains tax: asset register

Taxation Ruling
Income tax: capital gains tax: asset register

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Preamble

The number, subject heading, ***Class of person/Arrangement, Date of effect*** *and* ***Ruling*** *parts of this document are a 'public ruling' for the purposes of Part IVAAA of the* ***Taxation Administration Act 1953*** *and are legally binding on the Commissioner. The remainder of the document is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Ruling is about

1. This Ruling is about:

   a) the use of asset registers under Division 121 of the *Income Tax Assessment Act 1997* ('ITAA 1997') for keeping records about Capital Gains Tax ('CGT') assets, acts, transactions and events;

   b) valid entries in an asset register;

   c) valid certification of asset register entries; and

   d) entries made either in paper registers or electronically.

Class of person/arrangement

2. This Ruling applies to taxpayers who wish to maintain asset registers in meeting their obligations to keep CGT records.

3. The Ruling considers the minimum requirements necessary to satisfy the statutory requirements in respect of asset registers to permit original records to be discarded after the period specified in section 121-25 of the ITAA 1997.

4. The Ruling does ***not*** address the question of what evidence it may be advantageous or prudent for a taxpayer to keep if any dispute with the Commissioner subsequently arises.

Date of effect

5. This Ruling applies to entries made in an asset register under Division 121 of ITAA 1997 that are certified by a tax agent or a person approved by the Commissioner, on or after 1 January 1998. Subsections 160ZZU(6) and (9) of the *Income Tax Assessment Act 1936* ('ITAA 1936') also indicate that taxpayers may include in an asset register details of an asset acquired before commencement of those subsections provided that the information is certified on or after 1 January 1998.

Ruling

6. Asset registers must comply with the general record keeping requirements expressed in section 121-20 of the ITAA 1997. The asset register must contain all of the information that can reasonably be expected to be relevant to working out whether you have made a capital gain or capital loss, otherwise you must retain your original documents.

7. Your asset register must contain essential information about CGT assets, acts, transactions, events or circumstances that you transferred from your original documents. Original documents include, for example, invoices, receipts, contracts and valuations, or other records, including taxpayer created records such as elections, options or choices made and evidenced in writing. These represent the most elementary entries and it may be necessary for taxpayers to include more information, depending upon the complexity of the arrangement.

8. Taxpayers may maintain the register themselves, or have someone else, such as a tax agent, maintain it for them.

9. Provided that a person who is a registered tax agent or another person approved by the Commissioner certifies the entries as being a true record of information contained in the original documents, taxpayers may dispose of original documents five years ***after*** certification.

10. The act of certification reflects a commitment to records integrity and/or copying in a similar fashion to the procedures adopted with legal documents or certifications by Commissioners of Declarations etc. For example, in respect of a paper version of an asset register, in addition to certifying a particular entry or series of entries for a particular date, the tax agent or other person approved by the Commissioner would ensure that the register is:

- typed, printed or completed in ink;

- page numbered sequentially; and
- initialled on each folio.

11. Certification does not represent some sort of verification of the truth of the information added to the register.

12. The following is an example of an appropriate form of words for certification:

> *I, [full name], Registered Tax Agent [No.], certify that this and the preceding pages signed by me for identification are a true and faithful transcription of information contained in the original documents which I have sighted.*
>
> *[Signature]*
>
> *[Date]*

13. The asset register may be formatted as a table, schedule or some other form. Taxpayers may copy information *verbatim* or as a summary of the information contained in the original document. However, it is mandatory that an entry contains all of the information in the original document relevant to establishing and/or calculating any capital gain or capital loss, be certified and of sufficient integrity to satisfy the requirements of Division 121 ITAA 1997.

14. An asset register may be a paper record or in electronic form. Taxpayers opting to use electronic systems must ensure that whatever system is used complies with all of the provisions of the legislation governing record keeping. Like paper based systems, and consistent with the policy of the legislation, an electronic asset register needs to be sufficiently secure to ensure that each entry provides an accurate transcription of information from the original records and certification of entries. The format of the system should be such that entries cannot be easily altered once entered. For example, the software should incorporate audit trails to track additions and deletions to the register.[1] Records generated and stored in a computer are documents for the purposes of federal legislation: section 25 *Acts Interpretation Act 1901*; sections 47, 48, 149 *Evidence Act 1995*.

15. An asset register will ***not*** satisfy the record keeping legislation if the information stored is in an electronic form that can be easily altered e.g., a mere spreadsheet. A spreadsheet that does not incorporate adequate security measures to prevent unauthorised access and data manipulation lacks the security and integrity that an asset register ***must*** have.

16. Asset register entries must satisfy the provisions of paragraph 121-20(2) ITAA 1997. The records must be in English, or be readily

[1] The ATO is unaware of any software currently available commercially that meets the requirements of section 121-35 ITAA 1997.

accessible and convertible into English. The records must also include whatever material is necessary for liability to pay CGT to be easily identified and calculated.

Explanation

17. Division 121 ITAA contains the record keeping provisions relating to capital gains and capital losses. Section 121-25 ITAA 1997 requires taxpayers to retain records not only until the end of 5 years after a CGT event happens, but also 5 years after any further relevant CGT event can happen which would be relevant to determining whether you have made a capital gain or capital loss from the event. Taxpayers will also need to keep those records to substantiate any carry forward capital loss which is intended to be applied to a future capital gain.

18. Section 121-15 *Income Tax (Transitional Provisions) Act 1997* requires that taxpayers continue to keep records in accordance with Division 121 ITAA 1997 if they had been keeping records under section 160ZZU ITAA 1936.

19. Relevantly, Division 121 ITAA 1997 also permits taxpayers to maintain an asset register in place of original records relevant to calculating a capital gain or a capital loss arising out of a CGT event. Section 121-35 ITAA 1997 and its predecessor subsection 160ZZU(9) ITAA 1936, provide the legislative foundation for taxpayers to use an asset register in lieu of retaining original documents in discharging their responsibility to maintain records. Subsection 160ZZU(9) ITAA 1936 applied to asset register entries certified on or after 1 January 1998 until the introduction of Division 121 ITAA 1997. The legislation stipulates that you ***must*** keep your original documents for at least ***five years after certification*** of the asset register entry.

> ***Example***
>
> *James is an investor who specialises in rental properties. On 30 June 2000, he decides to transfer the property details to an asset register. On 01 July 2000, his tax agent sights the original documents and certifies that all of the details contained in the asset register match the details contained in the original documents. James cannot dispose of the original documents yet. He must still wait until 01 July 2005 before he can discard the originals.*

20. Paragraph 121-35(2)(a) ITAA 1997 stipulates that taxpayers must make asset register entries in English. The entries must contain all of the information contained in the original record that would be necessary to establish whether taxpayers made a capital gain or a capital loss from a CGT event.

What is not an asset register

21. An asset register will ***not*** meet the requirements of Division 121 ITAA 1997 if it is stored in a form e.g., in an electronic form such as spreadsheet programme, that can be altered. In the absence of adequate security measures to prevent unauthorised access and data manipulation, a mere spreadsheet lacks the security and integrity measures that an asset register ***must*** have. For an electronic document without such measures it would then be prudent to print the document for certification in hard copy form. Taxpayers can then either retain the paper record or transfer it to electronic media.

Certification

22. Paragraph 121-35(2)(b) ITAA1997 provides that another person who is a registered tax agent or some other person approved by the Commissioner must certify in the register that the information entered is correctly transcribed information from the original documents. If the register contains material other than that transcribed from the original records, the certifier should clearly identify what is being certified and what is not.

23. A person other than a tax agent seeking approval to certify asset register entries would need to demonstrate a sound understanding of taxation law.[2]

24. The act of certification does not represent some sort of verification of the truth of the record entered. Certification does not mean that the person certifying the record is certifying any more than the existence of the original document or taxpayer created record and that the entry in the register reflects that document.

> ***Example***
>
> *Michael arranges for a contractor to build a shed for $50,000 to protect farm machinery from the weather. Michael's accountant sights the original receipt supplied by the contractor in respect of the machinery shed. The accountant certifies that the information from the receipt has been properly transcribed into the asset register, not that $50,000 was actually spent or that the shed was actually used as stated.*

[2] Applicants seeking approval as a person approved by the Commissioner for the purposes of paragraph 121-35(2)(b) ITAA 1997 should write to the Australian Taxation Office in their capital city, quoting TR 2002/10 and indicating the basis for consideration.

25. In this respect the act of certification supplements other fundamental components of standard records handling and ensures that asset register entries are appropriately made and stored.

26. Taxpayers may dispose of original documents five years after certification in the asset register, although it is not compulsory to do so. Taxpayers may choose to retain the original documents for reasons unrelated to their responsibilities under CGT. However, it is ***essential*** that taxpayers retain original records for the period prescribed in section 121-25 ITAA 1997 if they have not transferred all relevant information to the asset register.

27. Taxpayers may choose to record original documents relating to a CGT asset in an asset register but retain other original documents recording other information relevant to the same CGT asset. The general record keeping requirements established by Division 121 ITAA 1997 also apply in relation to information not maintained in an asset register. In particular, you must retain your original documents if you do not include information in your asset register which is relevant to calculating a capital gain or a capital loss.

28. There is no prescribed format on how to set out entries in an asset register. The layout may take the form of a table, schedule or some other form, but must be certified. The nature and type of information to be included in the asset register will vary depending on the type of asset owned, the CGT event that happened to the CGT asset and the parties involved in the transaction.

Levels of Information

29. Taxpayers may find it prudent to retain documents, such as valuation reports, in addition to the information contained in the asset register. The following represent the minimum levels of information taxpayers should transfer from their original documents to an asset register in order to satisfy section 121-20 ITAA 1997:

- date of acquisition of the asset;
- cost of the asset;
- description, amount and date for any incidental costs you incurred to acquire the CGT asset or that relate to a CGT event that happens to the asset (e.g., legal fees or valuation fees);
- description, amount and date for any non-capital costs of ownership of the CGT asset you incurred if you acquired the asset after 20 August 1991 (e.g., interest on borrowings, rates or land tax);

- description, amount and date for expenses incurred to increase the asset's value that is reflected in the state or nature of the asset at the time of the CGT event (e.g., expenses incurred to erect a garage on residential property);
- description, amount and date for expenses incurred to preserve or defend your title or rights to the asset (e.g., legal fees);
- other information contained in a record that may be relevant in calculating your CGT obligation including decisions about elections, choices and options;
- date the CGT event happened to the asset; and
- capital proceeds received when the CGT event occurred.

30. Entries in an asset register must be either a direct copy or a summary of all relevant information contained in the original record. Taxpayers may provide comments to clarify entries, but it must be clear in the entry that the information is only commentary and not part of the record.

31. Taxpayer created records about taxation matters may constitute separate information or records from other records. This may include elections or choices, some of which may be contained primarily in amounts reflected in tax returns. Taxpayers may also need to retain such records for other reasons as separate documents outside an asset register. If there is some doubt about the precise details of the asset then you should keep your original documents.

32. Taxpayers may add comments to asset register entries to assist them to accurately calculate a capital gain or a capital loss. The entries must clearly indicate that the information is commentary, for example, by using footnotes, italics or attaching an appendix stating that the information is in the form of a comment.

Example

John receives his 2001/2002 rates notice from the shire council for a holiday home. The council rates on John's rental property for the 2001/2002 income year were $2,500. In the 2002/2003 income year, John was advised that an error had been made in relation to his rates notice and he received a refund from the council of $500. As John has now partially recouped rates which he previously included in his cost base he will need to create some record to that effect and he may amend his asset register to reflect the recoupment of this expenditure. John will need to ensure that this entry is certified.

33. Taxpayers opting to store information electronically face difficulties as digital technology evolves. In particular, taxpayers need to consider the implications of upgrading from an early version of digital software to a more recent version. If information cannot be transferred to the new system without corrupting the existing stored data, then the records must be retained in the existing certified electronic database or printed and retained in paper format. Taxpayers may also transfer an existing asset register kept in paper form to digital storage by scanning the documents into an electronic form. However, whatever system taxpayers choose ***must*** reflect integrity, accuracy and reliability in electronic record keeping.

Examples

Example 1 - Contents of a simple asset register

34. Jasmine is approaching retirement and buys an investment unit. She intends to use the unit as a source of funds for her old age and that it should pass to her child, Sarita, as part of her estate. She wants Sarita to be able to ascertain easily the cost base of her unit after her death.

35. Jasmine records the purchase price of the unit, date of acquisition, stamp duty and legal fees incurred in acquiring the unit. She records the details in an asset register. Jasmine's tax agent certifies the entry.

Example of a CGT Register

Asset[3]	Two bedroom home unit with underground lock-up garage (single vehicle)	
Address	3/21 Blackacre Street JONESVILLE NSW 1234	
Taxpayer	Jasmine JONES	
Vendor	[name of home unit developers]	
Date of Contract	Contract of purchase signed on 02 January 1990	
Consideration	$150,000	
Settlement	Settlement date of 05 February 1990	
Conveyancing fee	$1,500 paid to [name of conveyancer]. Letter dated 05 February 1990 outlining fee for conveyancing of home unit. Fee paid and receipt dated 05 February 1990	
Stamp Duty	$2,000 paid to NSW Office of State Revenue on 05 February 1990. Receipt dated 05 February 1990	
Certification	I, [full name], Registered Tax Agent [No.], certify that this and the preceding pages signed by me for identification are a true and faithful transcription of information contained in the original documents which I have sighted. [Signature] [Date]	

[3] Taxpayers may include references to cheque butts, bank statements and details of other events or circumstances relevant to the assets listed.

Example 2 - Asset register for a depreciating asset

36. Bill buys a powerful laptop computer on 1 July 2001 for $11,000 while still in his final year of graphic design at university. The effective life of the laptop is three years and Bill's diminishing value rate is determined to be 50%. He starts work on 1 January 2002 with an internet service provider designing web pages. On 30 June 2002 Bill estimates that he used the laptop 50% for private and 50% for income related purposes. On 30 June 2002 Bill sells his laptop for $5,600. His accountant certifies the entries. Bill should include

- a balancing adjustment amount of $50 as income;
- a deduction to the value of 50% of $5,500; and
- a capital gain on disposal of a depreciating asset of $50.

His asset register could be as follows:

Date	Description	Amount	Comment
01 July 2001	Purchase of laptop computer (Serial Number 1234567) from [name of supplier] as per supplier's tax invoice and receipt.	$11,000	Used from 01 July to 31 December 2001 for private study. Diminishing value rate of 50% (150%/effective life of 3 years)
01 January 2002			Commenced work with [name of employer] as web page designer, using the laptop at work.
30 June 2002	Private sale of laptop as per receipt provided to buyer.	$5,600	
		$2,750	Year 1 deduction for decline in value (50% estimate as private use
		$5,500	Written Down Value
		$50	Balancing adjustment amount (50% estimate as private use)
		$50	Capital gain on disposal of declining value asset (50% estimate as private use)

I, [full name], Registered Tax Agent [No.], certify that this and the preceding pages signed by me for identification are a true and faithful transcription of information contained in the original documents which I have sighted.

[Signature]

[Date]

Detailed contents list

37. Below is a detailed contents list for this Ruling:

Commissioner of Taxation
19 June 2002

Previous draft:
Previously released in draft form as TR 1998/D10

Related Rulings/Determinations:
TR 92/1; TR 97/16

Subject references:
- documentation and records
- CGT records

Legislative references:
- AIA 1901 25
- EA 1995 47
- EA 1995 48
- EA 1995 149
- ITAA 1936 160ZZU
- ITAA 1936 160ZZU(6)
- ITAA 1936 160ZZU(9)
- ITAA 1997 Div 121
- ITAA 1997 121-20
- ITAA 1997 121-20(2)
- ITAA 1997 121-25
- ITAA 1997 121-35
- ITAA 1997 121-35(2)(a)
- ITAA 1997 121-35(2)(b)
- Income Tax (Transitional Provisions) Act 1997 121-15

ATO references:
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