TR 98/D10 - Income tax: capital gains tax: asset register

This document has been finalised by TR 2002/10.

Draft Taxation Ruling

Income tax: capital gains tax: asset register

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TR 97/21

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What this Ruling is about

Class of person/arrangement

1. This Ruling considers the changes to section 160ZZU of the *Income Tax Assessment Act 1936* ('the Act') that introduce a new method of keeping records for assets subject to capital gains tax ('CGT') under Part IIIA of the Act. These changes are designed to enable taxpayers to discard records that might otherwise be required to be retained for long periods of time.

2. The Ruling outlines the requirements for entering information in an asset register and describes the implications of making an 'asset register entry'.

Note: *Tax Law Improvement Act (No 1) 1998* has introduced parts of the rewritten CGT law into the *Income Tax Assessment Act 1997* ('the 1997 Act'). Under these amendments, the new Division 121 of the 1997 Act now contains CGT record keeping requirements. However, the changes in relation to asset register entries discussed in this draft Ruling have not, as yet, been rewritten into the 1997 Act, as they are recent amendments. As such, the provisions of section 160ZZU of the Act dealing with asset register entries apply to records kept in accordance with either section 160ZZU or Division 121 of the 1997 Act. To avoid confusion, this draft Ruling will only refer to section 160ZZU in discussing record keeping requirements.

Ruling

What is an asset register?

3. An asset register is a register maintained for the purpose of recording particular information about assets. That information is certified in the asset register as having been entered from other records required to be kept under section 160ZZU. This generally requires the asset register to be kept as a paper record. A taxpayer may choose to keep the register in a table, schedule, spreadsheet or some other form.

4. Under section 160ZZU, a taxpayer who owns an asset is required to keep records of information relevant in determining the CGT consequences of the disposal of the asset. The records are to be retained, usually for five years after the disposal of the asset. However, the introduction of an asset register entry into section 160ZZU gives taxpayers a choice. The choice, in general terms, is to continue to retain all relevant records until after the disposal of the asset, or discard some of the records earlier by transferring particular information from those records to an asset register.

5. If the choice is to use the asset register, the information (such as amounts, dates, names, etc.) in source documents (such as receipts, payments, invoices, etc.) should be entered in the asset register. A registered tax agent (or other person approved by the Commissioner) is required to certify that the information has been properly entered in the asset register. The source documents can be discarded five years after certification of the entry.

6. An asset register, kept as a paper document, may be stored in an electronic form if the imaging of the paper asset register onto an electronic storage medium satisfies the requirements of Taxation Ruling TR 97/21. These requirements relate to preserving the integrity and reliability of any electronic record and, in particular, to demonstrating that the information in it cannot be altered once stored. The requirement for certification indicates that the asset register is intended to have a high level of integrity and reliability.

7. An asset register entry that is stored electronically is required to be kept for the same period as a paper asset register entry, which for most assets is five years after the disposal of the asset. Generally, taxpayers keeping records in electronic form are obliged to transfer the information to a paper asset register entry to satisfy any access requests by the Commissioner to those records (refer section 25A of the *Acts Interpretation Act 1901*).

What must an asset register contain in order that a record can be discarded?

8. Before a record can be discarded two events must occur. The first event is that the asset register must contain an asset register entry or entries setting out all of the relevant information contained in the record, which is required to be kept for the purposes of section 160ZZU. The second event is that the record or records are retained for at least five years after the entry is 'certified'. Information need not be transferred from a record to an asset register where the equivalent information:

(a) has already been transferred from another record and forms part of an existing asset register entry; or

(b) is in another record that is proposed to be kept for the required period (i.e., usually five years after the disposal of the asset).

What is an 'asset register entry'?

9. An asset register entry is taken to have been made if:

(a) a person (i.e., the record keeper) is required under section 160ZZU to keep records containing particular information; and

(b) the record keeper makes an entry in a register in English setting out some or all of the information; and

(c) a registered tax agent or other approved person certifies the entry; and

(d) the record keeper retains the records for five years after the entry is certified.

How is the information to be entered?

10. Information entered in an asset register should be copied from a record or represent a shortened version of what is contained in a record. A shortened version of information contained in a record should add nothing new to the information that is transferred to the asset register and make no material changes to that information.

Who can make an asset register entry?

11. A taxpayer or any person allowed to act on the taxpayer's behalf can make an entry in an asset register.

Who can certify an entry?

12. A registered tax agent may certify an asset register entry. The Commissioner has the discretion to allow other persons to certify asset register entries. Consideration is currently being given to extending the categories of approved persons.

What is the certifier certifying?

13. The certifier is certifying that information has been accurately transferred from records to the asset register.

How should an entry in an asset register be certified?

14. An entry should be certified by a written signature, and the date of the signature recorded. A tax agent who makes a number of entries in an asset register on the same day may certify all of those entries by making one signature for the particular day's entries. If entries are made over several days, each entry or series of entries should be certified on a daily basis.

When can information be transferred to an asset register?

15. The transfer of information from records to an asset register can be made at any time.

Can an asset register entry be made in relation to an asset which is acquired before 1 January 1998?

16. Yes, an asset register entry can be made in relation to an asset which is acquired prior to 1 January 1998.

When can an asset register entry be certified?

17. An entry in an asset register may only be certified on or after 1 January 1998. Information copied from documents to an asset register prior to 1998 may therefore constitute an asset register entry, if the entry is certified on or after 1 January 1998.

Is the asset register proof of anything?

18. The requirement in section 160ZZU, to keep particular records for CGT purposes, is not directly linked to whether the records allow a taxpayer to satisfy the onus of proof on any point of contention with the Commissioner. The evidentiary value of the records depends on

such matters as how they were obtained or brought into existence, how they have been cared for, and what oral evidence can be given about them. It follows that an asset register containing particular information from those records can have no greater evidentiary value than the records themselves and, like the records from which the information is transferred, the asset register entry constitutes prima facie evidence.

Date of effect

19. This Ruling applies to entries made in an asset register that are certified on or after 1 January 1998.

Explanations

Pre asset register CGT record keeping requirements

20. The record keeping provisions of the CGT legislation are in section 160ZZU. Broadly, subsection 160ZZU(1) requires a taxpayer to keep such records in English as are necessary to ascertain the date the person acquired an asset and, if the asset has not been disposed of, any amount that would have formed part of the cost base of the asset if it had been disposed of.

21. When the asset is disposed of, a taxpayer is required to keep records in relation to the date of disposal, any amount that formed part of the cost base and the consideration in respect of the disposal. For most assets, records need to be kept for five years after the asset has been disposed of (paragraph 160ZZU(6)(a)).

Post asset register CGT record keeping requirements

An asset register

22. An asset register is usually a paper document. Information can be transferred from a taxpayer's source records to an asset register. A taxpayer may choose to keep a register in a table, schedule, spreadsheet or some other form.

23. Some of the information appropriate to include in an asset register, if contained in a record in relation to an asset, may include:

- the date of acquisition of an asset;
- the amount of expenditure or receipt shown in the record;

- a description of the expenditure, receipt or event, as contained in the record; and
- other information contained in a record that may be relevant in calculating a taxpayer's CGT liability.

24. Under the asset register amendments to subsections 160ZZU(6) and (6C), taxpayers are able to satisfy their CGT record keeping requirements by keeping their records for the period ending five years after the periods specified in subsections 160ZZU(6) and 160ZZU(6C) (usually date of disposal), or by making an asset register entry and keeping it for the same required period, or by a combination of both.

25. The asset register is usually kept in a paper form so that the certifier's written signature in relation to an entry or entries can be checked at a later time.

26. It is proposed to accept that an asset register can be stored electronically, provided the electronic asset register is created by the scanning of a paper asset register document into a digitised electronic form. The addition of further information at a later time to an electronic asset register would be accepted, subject to the further information being scanned from an asset register recorded on paper. Further details of our views on electronic scanning are in Taxation Ruling TR 97/21.

Information in an asset register allows a record to be discarded

27. The amendments to subsections 160ZZU(6) and 160ZZU(6C) allow a taxpayer to comply with CGT record keeping requirements by retaining the necessary records or by making an asset register entry, or by a combination of both.

28. If a taxpayer enters all of the information required to be kept in an asset register, records do not have to be kept for longer than five years after the certification of the entry. If only some of the required information is entered in an asset register, a taxpayer is required to retain records in relation to the information that has not been entered in the register, usually for five years after the disposal of the asset.

An 'asset register entry'

29. An 'asset register entry' is defined in the new subsection 160ZZU(9), which says:

> '(9) If:

(a) a person (the ***record keeper***) is required by subsection (1), (3), (6A) or (6B) to keep records containing particular information; and

(b) the record keeper makes an entry in a register, in English, setting out some or all of the information; and

(c) a registered tax agent (within the meaning of section 251A) or other person approved by the Commissioner certifies in the register that the information entered in information from those records (so long as the person certifying is not the record keeper); and

(d) the record keeper retains the records that contain the information entered for at least 5 years after the entry is certified;

the entry is an ***asset register entry*** for those records.'

30. An asset register entry therefore contains information from records that enables the ready ascertainment of:

(i) date of acquisition;

(ii) amounts that form part of the cost base of an asset;

(iii) date of disposal; and

(iv) consideration for the disposal of the asset.

31. For a range of complex transactions the particular information that enables the ready ascertainment of these things may be quite lengthy. Taxpayers may well decide in such cases to keep the original records for these transactions, notwithstanding that particular information from the records could be entered into an asset register. There may also be other reasons, having nothing to do with income tax, why a taxpayer decides to keep original records.

Entering information

32. The entry of information in an asset register from a record should either involve a direct copy of relevant information from the record, or entry of a shortened version of that information. If the information is not contained in a record, it should not be entered in the register, as an asset register is meant to replace primary documents (e.g., invoices, rates notices, contracts, receipts, etc.). The information entered in the register may be used at a later time to compute a taxpayer's CGT liability.

33. A record keeper (taxpayer) may choose to make additional comments about the information transferred from a record to a register. Commentary on information copied from a record to the

register should be clearly marked as comments and does not constitute an asset register entry. Comments need to be clearly identified and this may be done by footnoting, use of italics, or having the comments attached as an appendix stating that they are comments only.

Example

A taxpayer receives a rates notice from the council for a holiday home. The notice contains particular information about expenses of a non-capital nature incurred in connection with the continuing ownership of the holiday home. These expenses may form part of the cost base of this asset under paragraph 160ZH(1)(ba) and subsection 160ZH(6A). However, the taxpayer's records establish that this asset is used 50% of the year for earning rental income and, on this basis, 50% of the expenditure on rates is claimed as a deduction against this income.

Under subsection 160ZH(6B), the non-capital costs of the ownership of the asset that form part of the cost base of the asset do not include any proportion that has been allowed or is allowable as a deduction to the taxpayer.

The taxpayer transfers information from the rates notice showing that expenditure was incurred in respect of the holiday home, on the date shown, to the Council for rates.

A comment to this entry indicates that the taxpayer holds records showing that he or she has used the asset for 50% of the year for income producing purposes, and that 50% of the rates has been claimed as an allowable deduction for the year in question. Therefore, only the remaining 50% of the total expenditure on rates forms part of the cost base of the asset.

34. This comment may assist a taxpayer in later years, or even decades, to work out what percentage of annual rates should form part of the cost base of the holiday house. This information is not, however, contained in the rates notice and does not represent information that can be copied from that record.

35. The entry of information from documents satisfying the record keeping requirements of subsections 160ZZU(1) and 160ZZU(3) may require an analysis of the document, bearing in mind other provisions of Part IIIA. It would be unwise, for instance, to discard a document if all of the relevant expenditures that may be included in the cost base of an asset have not been entered in an asset register. Familiarity with expenditures that may be included in the cost base of an asset may be useful in determining which information, and the quantity of information, is to be transferred to an asset register.

What constitutes a shortened version of information from a record?

36. It would be expected that a shortened version of information is just that, and adds nothing new or makes no material change to the information transferred.

37. A tax agent, acting on behalf of a taxpayer, who adds up a number of amounts in relation to a particular type of expenditure for a quarter, that form part of the cost base of an asset, would also be considered to be making a shortened entry of information.

> ***Example***
>
> *Joe has bank statements for a financial year that show the interest payable in relation to an asset. If the quarterly sum total of these monthly amounts is transferred to an asset register it would be accepted that the total represents a shortened version of the information contained in records.*

38. Sum totals should only be transferred on a quarterly basis so these amounts can be properly indexed. It would not be appropriate, however, for other amounts such as rates or stamp duty, that may also form part of the cost base of an asset, to be transferred to an asset register together with the interest amounts for a particular quarter, as one total figure. Such information would not constitute a shortened version of information contained in a record.

> ***Example***
>
> *Joe gives his accountant a rates notice received in January. Joe's accountant should not add this amount to the total interest figure for the March quarter and only include one amount in the asset register. Two entries should be made, one for the sum total of interest for the March quarter, and the other for the rates incurred in relation to the asset.*

Who can make an asset register entry?

39. Subsection 160ZZU(9) states that a person (i.e., the taxpayer) who is required to keep records containing particular information may make an entry in an asset register. Any person who acts on behalf of a taxpayer may also make an entry in an asset register. A tax agent may make an entry on behalf of a taxpayer and certify the entry.

Who can certify an asset register entry?

40. Registered tax agents are working in the field of taxation and should be familiar with the record keeping requirements of the taxation legislation. For this reason, tax agents have been specifically

included in the amendments to section 160ZZU as persons who may certify an asset register entry.

What is the certifier certifying?

41. The certifier is responsible for ensuring that information is accurately transferred to the asset register. This information should, as explained above, be either a copy or a shortened version of the information contained in the record.

Certification of an entry in an asset register

42. A tax agent acting on behalf of a taxpayer may copy information to an asset register from a record and then certify in writing that the information is contained in the record. In certifying the entry, the tax agent is acting in a different capacity from that undertaken in transferring the information from the record to the asset register. The tax agent's name and signature at the end of each entry copied from a record is sufficient to satisfy this requirement. The date of the signature should also be entered for the purpose of determining when the relevant record can be discarded (five years after the date the entry was certified).

43. A tax agent who makes a number of entries in an asset register on the same day may certify all of those entries by making one signature for the particular day's entries. If entries are made over several days, each entry or series of entries should be certified on a daily basis.

44. Any comments in relation to the entry do not have to be certified, but must be clearly identified as comments (see above discussion).

When can information be transferred to an asset register?

45. Information can be transferred to an asset register at any time. Certification of the entry, which is necessary for the entry to qualify as an asset register entry, cannot occur until on or after 1 January 1998. Information transferred to an asset register prior to 1 January 1998 may qualify as an asset register entry if the entry is certified on or after 1 January 1998.

Making an asset register entry in relation to an asset acquired before 1 January 1998

46. An asset register entry can be made in relation to an asset acquired prior to 1 January 1998.

> ***Example***
>
> *Sheila purchased 1,000 shares for $2 each on 2 January 1986. Sheila can copy the date of acquisition (2 January 1986) and any amount that forms part of the cost base of the shares (e.g., $2,000 purchase price plus $2.00 stamp duty) from her records to an asset register. The entry needs to be certified on or after 1 January 1998 to qualify as an 'asset register entry'.*
>
> **Note:** Sheila must maintain the records from which she transferred information to the asset register for five years after the date the asset register entry is certified.

When can an asset entry be certified?

47. Certification can take place at any time on or after 1 January 1998. Existing information already entered in a register can be certified from this date and, when the source record(s) have been kept for five years after the date of certification, those entries also become asset register entries.

Examples

Example 1

48. 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, Trixi, as part of her estate. She wants Trixi to be able to ascertain easily the cost base of her unit after her death which, based on an average life span, will be in 22 years time.

49. Jasmine reads the ATO CGT asset register brochure. She records the purchase price of the unit, date of acquisition, and stamp duty and legal fees incurred in acquiring the unit in an asset register, and her local tax agent certifies the entry.

CGT Asset Register		
Asset: Unit 3/21 Wilson Street, Eastmore **Name of taxpayer: Jasmine Jones**		
Asset register entry	**Asset register entry - amount**	**Comment**
Consideration	$150,000	Contract for sale of unit
Date contract for sale made - 5 January 1998		
Stamp duty payable [re purchase of unit]	$1,500	Cheque butt re amount paid to State Revenue for stamp duty 20 January 1998
Conveyancing fees [re purchase of unit]	$1,000	Receipt from Cheap Convey Pty Ltd dated 21 January 1998
Certification: I certify that the above [4] entries contain information from the records of the taxpayer required to be kept under section 160ZZU [name] [signature] [date]		

50. In 2019 Jasmine dies. Her child Trixi can, as beneficiary of Trixi's estate, readily compute the cost base of the unit due to the asset register that has been enclosed in her mother's will.

Example 2

51. Rush decides to enter information from records in relation to an investment block of land he acquired in Woolgoolga. Rush enters the details in relation to the purchase price of the land in the asset register. Rush forgets to enter the date of the purchase that is shown on the document from which he copied the purchase price. Rush forgets to tell his accountant about the entry.

52. Rush has not transferred the necessary date of acquisition from the contract of sale of land. Rush has also failed to have the entry certified.

53. If Rush continues to own the land and discards the contract of sale document five years after failing to have the purported asset register entry certified, he will not have satisfied the record keeping

requirements of section 160ZZU as he should keep the contract of sale document for five years after the disposal of the land.

Example 3

54. Assume Rush's accountant certifies the entry and does not transfer the date of the contract to purchase the land into the asset register. In this event, the asset register will not contain all of the relevant information required under paragraph 160ZZU(1)(a). This paragraph requires, a person to keep records, in English, as are necessary to enable the 'ready ascertainment' of the date of acquisition.

55. Rush will still have to maintain a record, whether it be the contract of sale or some other document, that demonstrates the date of acquisition of the land. Rush does not have to keep a record of the purchase price of the land, after the expiration of five years from the date of certification, as this information has been transferred to the asset register.

Example 4

56. Joe Brown buys 15 hectares of coastal land in January 1980 for $1m. He constructs a motel on the land in 1990. The costs of building the hotel are $0.5m. Joe keeps all details of his building costs. Joe was an owner-builder at the time of building the motel and many payments were made to different contractors. Joe intends to work at the motel for at least fifteen years until retirement.

57. Joe is worried that, over time, he may misplace the receipts and invoices in relation to the building of the motel. Joe's accountant explains the workings of subsection 160P(6) to Joe and advises him to enter the details of these transactions in an asset register. The appropriate entries are shown in the table below:

CGT Asset Register		
Asset: motel building (motel is located on Lot A, Mulberry Road Mullumbimby) **Name of taxpayer: Joe Brown**		
Asset register entry	**Asset register entry - amount**	**Comment**
		Purchase Price of land, from contract dated 1 April 1980 - $1,000,000 NB - information about land acquired before 20 September 1985 does not have to be retained under section 160ZZU. For this reason, this information does not constitute an asset register entry.
Architect's fees payable to Design Pty Ltd	$18,000	Invoice dated 1 January 1990; receipt dated 1 February 1990
Fees for engineering services payable to Dimitri Pascoe	$11,000	Invoice dated 18 January 1990
Services rendered	$28,000	Invoice from Felix Mud, Bricklayer, dated 25 February 1990
Building materials	$18,000	Receipt from Hardware 2000, dated 28 February 1990
Electrical work Mulberry Road	$21,000	Invoice from Spark Pty Ltd dated 23 March 1990
Plumbing work Mulberry Road payable to Bill Smith	$10,000 and $15,000	Receipts dated 2 April 1990 and 25 April 1990
Certification: I certify that the above [6] entries contain information from the records of the taxpayer required to be kept under section 160ZZU [name] [signature] [date]		

Example 5

58. Ingrid Green purchases a large residential block of land and house at 54 Thomas St on 31 August 1994 for $100,000. Ingrid rents out the property. On 1 September 1996 she subdivides the land. She intends to build another house on this land so that she can derive increased rental income. Ingrid does not start building on the land for another three years (1 July 1999) due to cash flow problems. During the period after subdivision she pays the rates on both properties.

59. In 2002 Ingrid becomes worried about her record keeping in relation to both blocks. Ingrid also views the property as her superannuation and intends holding the property for the remainder of her life. Ingrid's accountant reviews her documentation and makes the following entries in an asset register:

CGT Asset Register		
Assets: 54A and 54B Thomas Street **Name of taxpayer: Ingrid Green**		
Asset register entry	**Asset register entry - amount**	**Comments**
Consideration, land and buildings and contents	$100,000	Contract for sale of 54 Thomas St with WB Smith
Date of contract for sale of land and buildings - 31/08/94		
Fees for survey work payable to Map Pty Ltd - 54 Thomas St	$1,000	Invoice dated 1 February 1996
Fees for water connection 54 Thomas St	$2,000	Receipt dated 30 June 1996 from WaterCo
Erection of fence 54 Thomas St	$400	Invoice from Happy Fencing Pty Ltd dated 18 August 1996
Fees for legal services re Application to AB Council to subdivide 54 Thomas St payable to Beagle Pty Ltd	$1,900	Invoice dated 18 September 1996 Letter from AB Council 1 October 1996 advised block 54 now 54A and 54B. Block 54A has existing house; Block 54B is a vacant block
Rates payable to AB Council - 54B Thomas St	$525	Rates notice dated 30 June 1997 - undeducted rates on new lot created after subdivision - no construction of new dwelling has commenced
Construction work by J & J Homes Pty Ltd - 15/09/99	$55,000	Invoice dated 15 September 1999 - re construction of new house on 54B Thomas Street
Certification: I certify that the above [8] entries contain information from the records of the taxpayer required to be kept under section 160ZZU [name] [signature] [date]		

Detailed contents list

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

Your comments

61. If you wish to comment on this Draft Ruling please send your comments by: 18 September 1998

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case references