Taxation Determination

Income tax: capital gains: if you own an interest in a CGT asset and you acquire another interest in that asset, do the interests remain separate CGT assets for capital gains purposes or do they become a single asset?

Preamble

The number, subject heading, date of effect and paragraphs 1 to 3 and 7 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. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

Date of Effect

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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Interests in a CGT asset

1. The interests remain separate CGT assets for capital gains purposes.

2. The interests are separate CGT assets whether the first interest was acquired before 20 September 1985 (a pre-CGT interest) or was acquired on or after 20 September 1985 (a post-CGT interest).

3. The consequences are that on the occurrence of CGT events affecting the interests (for example CGT event A1 – about disposals of CGT assets - in section 104-10 of the *Income Tax Assessment Act 1997*):

(a) there is a separate date of acquisition for each interest;

(b) there is a separate cost base for each interest; and

(c) capital proceeds are determined separately for each interest.

Example 1

4. *Sam and Terry jointly purchase land in 1982 to build a holiday house. Terry sells his 50% interest to Sam in 1998. Any capital gain or capital loss Terry makes is disregarded for capital gains purposes because his interest is a pre-CGT interest.*

5. *If Sam later sells the land, the sale proceeds are attributed 50% to the pre-CGT interest and 50% to the post-CGT interest. Any capital gain or capital loss Sam makes on his pre-CGT interest in the land is disregarded for capital gains purposes. If Sam makes a capital gain on his post-CGT interest in the land it would be taken into account in calculating his net capital gain or net capital loss for the income year.*

6. *If Sam decided to sell only a 50% interest in the land, he could:*

(a) *sell either his (50%) pre-CGT interest or his (50%) post-CGT interest; or*

(b) *he could sell two 25% interests in the land (being 50% of his pre-CGT interest and 50% of his post-CGT interest).*

Collectables

7. An interest in a collectable is itself a collectable. A capital gain or capital loss made from an interest in a collectable is disregarded if the market value of the entire collectable at the time the interest is acquired is $500 or less: subsection 118-10(2). If you acquired a further interest in the collectable after the market value of the entire collectable has increased to more than $500, a capital gain or capital loss may be made from the further interest. If you last acquired the interest in a collectable before 16 December 1995, a capital gain or capital loss is disregarded if you acquired the *interest* for $500 or less: see section 118-10 of the *Income Tax (Transitional Provisions) Act 1997*.

Note

8. A proposed legislative change to the threshold for disregarding a capital gain or capital loss from a collectable was introduced in the House of Representatives on 29 June 2000 in item 42 in Schedule 4 to Taxation Laws Amendment Bill (No 7) 2000. If that change is enacted by Parliament as contained in the Bill, subsection 118-10(1) of the 1997 Act will provide that 'A capital gain or capital loss you make from a collectable is disregarded if the first element of its cost base is $500 or less'.

Example 2

9. *Robert and Steve each acquire a 50% interest in a painting in 1999. They each pay 50% of the then market value ($400) of the painting. They each acquire a collectable (being their interest in the painting) for $200.*

10. *Robert acquires Steve's 50% interest in the painting in 2000 for $600. The painting's market value at that time is $1,200. Robert has acquired another collectable (being the further 50% interest) for $600.*

Disposal for $2,000

11. *Robert now has two separate assets (being the two 50% interests he acquired separately). Robert disposes of the painting for $2,000. $1,000 of the sales proceeds is attributed to each of the two interests in the painting. Robert's capital gain on the sale of his 1999 interest is disregarded because the market value of the painting in 1999 was less than $500. Robert makes a capital gain on the 2000 interest in the painting of $400 ($1,000 less $600, ignoring indexation).*

Disposal for $1,000

12. *If the painting's value depreciates and Robert disposes of it for $1,000, the capital loss on his 1990 interest is disregarded. Robert makes a $100 capital loss on his 2000 interest (that is $600-$500) which is available to offset against capital gains he makes from other collectables.*

Commissioner of Taxation
13 September 2000

Previous draft
Previously issued as TD 1999/D66

Subject references
- CGT asset
- CGT event A1
- collectable
- cost base
- interest in a collectable
- interest in a CGT asset
- merger
- separate asset
- single asset

Legislative references:
- ITAA 1997 104-10
- ITAA 1997 118-10
- ITAA 1997 118-10(1)
- ITAA 1997 118-10(2)

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