



Taxation Determination

Income tax: capital gains: is an entity (other than a Commonwealth, State or Territory authority) which is given authority to acquire a CGT asset under a Commonwealth, State or Territory Act an 'Australian government agency' for the purposes of Subdivision 124-B of the *Income Tax Assessment Act 1997*?

Preamble

*The number, subject heading, date of effect and paragraphs 1 and 2 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 how a Determination is legally binding.*

Date of Effect

This Taxation Determination applies to years commencing both before and after its date of issue. However, it 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).

1. No. For Subdivision 124-B of the *Income Tax Assessment Act 1997* to apply, the entity acquiring a CGT asset – not being the Commonwealth, a State or a Territory – must be an authority of the Commonwealth or of a State or of a Territory and not merely an entity which is given authority under a Commonwealth, State or Territory Act to acquire the asset. Nor does the Subdivision apply if the entity acquiring the asset is merely authorised to do so by a Commonwealth, State or Territory authority.

2. The expression 'Australian government agency' is defined in subsection 995-1(1) to mean the Commonwealth, a State or a Territory or an authority of the Commonwealth, a State or a Territory.

Note:

3. The Treasurer announced in attachment M of his press release no 74 of 11 November 1999 that the scope of the involuntary disposal roll-over is to be extended, for involuntary disposals after 1pm Australian eastern summer time on 11 November 1999, to compulsory acquisition of a CGT asset by a private acquirer acting through recourse to a statutory power.

Commissioner of Taxation

13 September 2000

Previous draft:

Previously issued as TD 1999/D53

Related Rulings/Determinations:

TD 2000/37; TD 2000/38; TD 2000/39; TD 2000/40; TD 2000/41; TD 2000/42; TD 2000/43;
TD 2000/44; TD 2000/45

Subject references:

- asset
- Australian government agency
- authority
- capital gain
- CGT asset
- compulsory acquisition
- Commonwealth
- Commonwealth authority
- entity
- State
- State authority
- Territory
- Territory authority

Legislative references:

- ITAA 1997 995-1(1)
 - ITAA 1997 Subdivision 124-B
-

ATO references:

NO 99/108592

BO

FOI No.: I 1022865

ISSN: 1038-8982