

# ***TD 2012/21EC - Compendium***



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**Page 1 of 2**

## **Ruling Compendium – TD 2012/21**

This is a compendium of responses to the issues raised by external parties to draft Taxation Determination TD 2012/D4 Income tax: does CGT event E1 or E2 in sections 104-55 or 104-60 of the *Income Tax Assessment Act 1997* happen if pursuant to a valid exercise of a power contained within the trust's constituent document, the terms of the trust are changed?

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft Determination.

### **Summary of issues raised and responses**

<b>Issue No.</b>	<b>Issue raised</b>	<b>ATO Response/Action taken</b>
1	Inclusion of further examples.	The examples have been revised to provide guidance on other scenarios identified in the submissions as being scenarios commonly seen in practice involving amendments to trust deeds.
2	Clarification that a CGT event will not happen if, in the absence of a supporting power, application is made to the court to vary the trust and an appropriate order is made.	The determination has been revised to provide relevant clarification.
3	Inclusion of an example discussing a widely held listed unit trust making changes to constitution by special resolution of unitholders at AGM necessitated by changes to the <i>Corporations Act 2001</i> .	No change made. The Commissioner is not aware of Corporations Law changes 'necessitating' changes being made to the deed, and without this detail a generic example would not seem to be helpful. Consideration was given to confirming that changes made pursuant to a power to do so to remove the vesting date of a public unit trust would not result in CGT event E1 happening (as previously set out in <i>Trust resettlements – AIFRS related amendments to trust deeds</i> ) but it was thought unlikely that such an example continues today to be of much relevance.

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**Page 2 of 2**

<b>Issue No.</b>	<b>Issue raised</b>	<b>ATO Response/Action taken</b>
4	Consequence of trustee approaching court to have deed varied in the absence of the deed conferring an explicit power on the trustee to amend.	The examples have been revised to make clear that if the court approves a variation to the trust in the absence of a power to amend, this will not result in the happening of a CGT event E1 or E2 as the trust will not have come to an end for trust law purposes.
5	Clarification of circumstances in which a deed amendment, although made pursuant to a valid exercise of a power to amend, might cause the trust to terminate.	No change made. While it would seem unlikely that an amendment that would otherwise terminate a trust would be a valid amendment, the issue raised involves questions of trust rather than tax law beyond the scope of the Determination.
6	Consequence of trustee exercising power under deed where the action is later deemed invalid.	A note has been added to alert the reader to the fact that invalid amendments are of no effect. However, a detailed discussion of this issue goes beyond the scope of the Determination.
7	Clarification of circumstances in which the Commissioner considers that an attempt to exercise a power is invalid.	A note has been added to provide an example of an instance where the Courts were of the view that the attempt to exercise a relevant power was not valid (namely due to the power not being as extensive as thought). However, the issue raised really involves questions of trust rather than tax law and any detailed discussion is beyond the scope of the Determination.