


TD 1999/D69 - Income tax: capital gains: can property or a right that does not have a 'market value' be a CGT asset?

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This document has been finalised by [TD 2000/33](#).

Draft Taxation Determination

Income tax: capital gains: is know-how a CGT asset?

Preamble

Draft Taxation determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the ATO.

1. No. Know-how is not a CGT asset because it is not a form of property nor a legal or equitable right.
2. Know-how is knowledge or information rather than a CGT asset.

Note 1

3. A right in respect of know-how, such as a contractual right to require the disclosure or non-disclosure of know how, is a CGT asset under subsection 108-5(1) of the *Income Tax Assessment Act 1997*. Similarly, a licence to use know-how is a CGT asset.

Note 2

4. There may be implications under the revenue provisions of the income tax law for receipts for supplying or imparting knowledge or information: see section 6-5.

Your comments

5. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

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Commissioner of Taxation

11 August 1999

Related Rulings/Determinations:

IT 2660; TR 93/12; TR 98/3

Subject references:

CGT asset; information; know how; knowledge; licence; rights

Legislative references:

ITAA 1997 6-5; ITAA 1997 108-5(1)

ATO references:

NO 99/10671-9

BO CGT asset summit 1999

ISSN: 1038 - 8982