


TD 1999/D89 - Income tax: capital gains: is the Commonwealth or a State or Territory an entity for the purposes of CGT event D1 (about creating contractual or other rights in you) in sections 104-35 and 109-5 of the Income Tax Assessment Act 1997 ?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D89 - Income tax: capital gains: is the Commonwealth or a State or Territory an entity for the purposes of CGT event D1 (about creating contractual or other rights in you) in sections 104-35 and 109-5 of the Income Tax Assessment Act 1997 ?*

This document has been finalised by TD 1999/77.

Draft Taxation Determination

Income tax: capital gains: is the Commonwealth or a State or Territory an entity for the purposes of CGT event D1 (about creating contractual or other rights in you) in sections 104-35 and 109-5 of the *Income Tax Assessment Act 1997*?

Preamble

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

1. Yes.
2. The term ‘entity’ is defined in section 960-100 of the *Income Tax Assessment Act 1997* to mean an individual, a body corporate, a body politic, a partnership, any other unincorporated association or body of persons or a trust.
3. The definition includes a body politic. The Commonwealth and each of the States and Territories is a body politic. Being an entity, they create legal or other rights in you for the purposes of CGT event D1 if they confer statutory rights on you. If they do, you acquire the rights in terms of subsection 109-5(2) (event D1, about creating contractual or other rights) when the Commonwealth, State or Territory creates the rights.
4. Once acquired, the rights are subject to the capital gains provisions on a CGT event happening to them.

Note

5. The Commonwealth, States and Territories are, of course, not subject to income tax. The importance of this issue is for the application of the general acquisition rules in Division 109 in Part 3-1. As the Commonwealth, a State or a Territory is an entity it can create rights by statute in another entity and that entity would acquire the statutory rights in accordance with subsection 109-5(2), event number D1.

Example

6. *An Act of a State Parliament was enacted, the result of which was to create in a financial institution a right to a refund of contributions it had made to an emergency fund over the previous 5 years. By the legislation, a payment was made to the institution. The Act of Parliament created in the institution a legal right to the refund. When the State paid the refund, CGT event C2*

happened to the right because it came to an end by satisfaction. The institution makes a capital gain or loss depending on whether the proceeds received in consideration of the right are greater or less than the incidental costs incurred in having the right satisfied. The refund might also be income in ordinary concepts in the hands of the financial institution.

Your comments

7. 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.

Comments by Date: 24 September 1999
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Commissioner of Taxation

25 August 1999

Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

Subject references:

acquisition; asset; assets; body politic; capital gains; CGT event; CGT event C2; CGT event D1; Commonwealth; creation of rights; entity; rights; State; Territory

Legislative references:

ITAA 1997 104-35; ITAA1997 109-5; ITAA 1997 109-5(2); ITAA 1997 960-100

Case references:

ATO references:

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