TD 2004/D90 - Income tax: consolidation: is a unit in a cash management trust a retained cost base asset?

This document has been finalised by TD 2005/27.

Draft Taxation Determination

Income tax: consolidation: is a unit in a cash management trust a retained cost base asset?

Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the ***Taxation Administration Act 1953****. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No. To be a retained cost base asset, a unit in a cash management trust would need to be a right to receive a specified amount of Australian currency: paragraph 705-25(5)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997). Our views on the meaning and effect of that paragraph are set out in Draft Taxation Ruling TR 2004/D26. That draft Ruling states that a retained cost base asset in terms of paragraph 705-25(5)(b) of the ITAA 1997 consists of a present right to the actual or constructive receipt of a fixed, nominal amount of Australian currency, without the presence of any element of contingency or defeasibility.

2. A number of banks, merchant banks, broking firms and building societies operate cash management trusts. These trusts operate with a trust deed, a trustee overseeing activities and a management company responsible for investment strategy. Cash management trusts are managed investment schemes registered under the *Corporations Act 2001* and are not listed on any securities exchange.

3. Interests in a cash management trust, which are called units, represent a share in the trust's collective asset pool. Certain rights are attached to units and these rights are exercisable by the investors who own these units (unit holders). Units in a cash management trust fund are typically issued at an equal and fixed price of one dollar.

4. Subject to the *Corporations Act 2001*, the trust deed and other terms on which units are held, unit holders can redeem their units at any time. Various formulae are used to ensure that the amount for which a unit is redeemed is a *pro rata* share in the trust's collective asset pool. Therefore, where there is accumulated net income awaiting distribution or an accumulated net loss of the trust fund, a unit's value will reflect its proportionate share of that income or loss. This remains the case even where the redemption price of a unit is fixed under the relevant trust deed because the amount that such a unit holder is entitled to be paid on redemption is still subject to adjustment for any accumulated net income or net losses. There is, then, no fixed and nominal amount which a unit holder has a present right to receive on acquiring a unit in a cash management trust.

5. Where a cash management trust fund is terminated in accordance with the trust deed or becomes not liquid (subsection 601KA(4) of the *Corporations Act 2001* defines what is a 'liquid scheme'), there is no right to receive a specified amount of Australian currency in terms of paragraph 705-25(5)(b) of the ITAA 1997. On termination, a unit only entitles the unit holder to a share in the net proceeds from the realisation of the fund's investments. Where the trust becomes not liquid, a unit holder is only able to withdraw from the trust if an offer of withdrawal is made. If such an offer is not made, the unit holder has no right to withdraw from the trust (refer to sections 601KB to 601KE of the *Corporations Act 2001*). The right to payment conferred by a unit in a cash management trust fund is therefore defeasible.

6. Cash management trust funds may also contain other features which alone would result in a unit held by a unit holder not being a retained cost base asset in terms of paragraph 705-25(5)(b) of the ITAA 1997. For example, the trust deed may provide the management company with the right to transfer assets to a unit holder rather than paying Australian currency in satisfaction of all or part of a redemption request or to effectively cancel units held by a unit holder to meet the accumulated net losses of the trust fund.

Date of effect

7. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

8. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Due date: **18 February 2005**

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Commissioner of Taxation
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Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/20; TR 2004/D26

Subject references:
- cash management trust
- consolidation
- not liquid
- retained
- retained cost base asset
- unit
- unit holder

Legislative references:
- TAA 1953 Pt IVAAA
- ITAA 1997 Pt 3-90
- ITAA 1997 705-25(5)(b)
- Corporations Act 2001
- Corporations Act 2001 601KA(4)
- Corporations Act 2001 601KB
- Corporations Act 2001 601KC
- Corporations Act 2001 601KD
- Corporations Act 2001 601KE

ATO references

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