


TD 1999/77 - Income tax: capital gains: is the Commonwealth or a State or Territory an entity for the purposes of Event Number D1 (about an entity creating contractual or other rights in you) in subsection 109-5(2) of the Income Tax Assessment Act 1997?

 This cover sheet is provided for information only. It does not form part of *TD 1999/77 - Income tax: capital gains: is the Commonwealth or a State or Territory an entity for the purposes of Event Number D1 (about an entity creating contractual or other rights in you) in subsection 109-5(2) of the Income Tax Assessment Act 1997?*



Taxation Determination

Income tax: capital gains: is the Commonwealth or a State or Territory an entity for the purposes of Event Number D1 (about an entity creating contractual or other rights in you) in subsection 109-5(2) of the *Income Tax Assessment Act 1997*?

Preamble

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination 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. 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, a trust or a superannuation fund.
3. The Commonwealth and each of the States and Territories is a body politic. They are entities which can create contractual or other rights in you for the purposes of Event Number D1 in subsection 109-5(2). If they do, you acquire the rights when the Commonwealth, State or Territory enters into the contract or 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 in another entity and that entity would acquire the 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. The financial institution acquired the right to receive the refund for the purposes of Event Number D1 in subsection 109-5(2) when the State passed the legislation. 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. The refund might also be income in ordinary concepts in the hands of the financial institution.

Commissioner of Taxation15 December 1999

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Subject references:

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

*Legislative references:*ITAA1997 109-5; ITAA 1997 109-5(2); ITAA 1997 960-100

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