TD 1999/82 - Income tax: capital gains: can you acquire a contractual or other legal or equitable right even though there may be no tax consequences for the entity creating the right?

This cover sheet is provided for information only. It does not form part of *TD 1999/82 - Income tax: capital gains: can you acquire a contractual or other legal or equitable right even though there may be no tax consequences for the entity creating the right?*

This Ruling has been reviewed as part of a project to review public rulings. The ATO view expressed in this Ruling is current as of 8 January 2018.

Taxation Determination

Income tax: capital gains: can you acquire a contractual or other legal or equitable right even though there may be no tax consequences for the entity creating the right?

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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. CGT event D1 (about creating contractual or other rights) in section 104-35 of the *Income Tax Assessment Act 1997* happens if one entity creates a contractual right or other legal or equitable right in another entity. The event still occurs even if there is no capital gain or loss for the entity creating the right (paragraph 102-23(a)).

2. Although there may be no tax consequences for the entity creating the right, you acquire the right 'when the contract is entered into or the right created' and you do so under the general acquisition rules in subsection 109-5(2).

Example 1

3. Alec contracts with you to be your sales manager for the next two years on a commission basis. You don't pay any inducement or other payment to him for entering into the contract, nor do you incur any expenses in connection with the creation of the contractual right. Alec has created a contractual right in you to require him to perform the duties as sales manager for the period of two years. Alec has not made a capital gain or a capital loss because he does not receive any proceeds or incur any incidental costs in relation to the event (CGT event D1 in subsection 104-35(3)). Even though no proceeds are received, the market value substitution rule does not apply (paragraph 116-30(3)(b)). You acquire the contractual right at the time of its creation (subsection 109-5(2)). Although you do not pay any inducement for the right, the market value substitution rule does not *apply to the first element of the cost base of the right and you are not taken to have paid or given anything for it (subsection 112-20(3), item 3).*

Example 2

4. A tax exempt entity creates rights in you to exploit certain natural resources. You pay $750,000 for the rights. The grant of the rights has a provision allowing you to assign your rights under the agreement. Two years after the agreement is in place you assign your rights to a third party for $1m. Even though the grantor of the rights is exempt from tax on the original transaction, you acquire a CGT asset when you become the owner of the contractual rights (section 109-5). When you assign the rights for $1m, you dispose of a CGT asset and CGT event A1 in section 104-10 applies. You make a capital gain of $250,000 ($1m capital proceeds less $750,000 cost base (ignoring indexation for the two years)).

Commissioner of Taxation
15 December 1999

Previous draft:

Previously released as TD 1999/D94

Subject references:

acquisition; capital gains; CGT asset; CGT event; CGT event A1; CGT event D1; contractual rights; creation of rights; equitable rights; legal rights; rights

Legislative references:

ITAA 1997 104-10; ITAA 1997 104-35; ITAA 1997 104-35(3); ITAA 1997 109-5(2); ITAA 1997 112-20(3); ITAA 1997 116-30(3)(b)

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