

TD 2000/33 - Income tax: capital gains: is know-how a CGT asset?

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Taxation Determination

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

Preamble

*The number, subject heading, date of effect and paragraphs 1, 2 and 4 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

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. No. Know-how is not a CGT asset because it is neither 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. According to the *Macquarie Dictionary* 3rd ed, 'know-how' is knowledge of how to do something.

Note 2

4. 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 3

5. There may be implications under the revenue provisions of the income tax law for receipts for supplying or imparting knowledge or information: see sections 6-5 and 6-10.

Previous draft

Previously issued as TD 1999/D69

Related Rulings/Determinations:

IT 2660; TR 93/12; TR 98/3; TR 1999/16;

Subject references:

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

Legislative references:

- ITAA 1997 6-5
 - ITAA 1997 6-10
 - ITAA 1997 108-5(1)
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ATO references:

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