TD 98/16 - Income tax: capital gains: what are the capital gains consequences for an Australian resident individual shareholder who transfers their original allocation of shares in AMP Limited to a related party?

Taxation Determination

Income tax: capital gains: what are the capital gains consequences for an Australian resident individual shareholder who transfers their original allocation of shares in AMP Limited to a related party?

Preamble

The number, subject heading, date of effect and paragraphs 1 to 6 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. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is binding on the Commissioner.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, it 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. Capital gains tax consequences arise if any resident shareholder disposes of their shares. Originally allocated shares in AMP Limited (AMP shares) may be transferred to related parties including spouses, children or other family members or private superannuation funds. A transfer of AMP shares to a related party is a disposal for capital gains tax purposes.

2. If the transferee does not pay the shareholder for the shares or, in a non-arm's length dealing, pays an amount that does not reflect the market value of the shares, the shareholder is taken to have received, for capital gains purposes, sale proceeds equal to the market value of the shares at the time of the disposal. Any capital gain or loss is then calculated using that market value.

3. If the disposal occurs on or after 15 June 1998, when AMP shares were listed on the Australian Stock Exchange, the market value of the shares can be determined from the daily share prices quoted in the newspapers. A shareholder may adopt, as the market value of the shares, the last traded price quoted for the shares the day of disposal.

4. If the disposal occurred before the listing date (15 June 1998), a shareholder needs to determine the market value of the shares. We accept a market value based on:

- an independent valuation made by a professional valuer; or
- your own valuation using reasonably objective and supportable data about AMP share prices around the time of the disposal, including financial commentators' estimates at that time of the value of the shares; or

- the last traded price of the shares on the first day of trading (15 June 1998), namely, $23.00.

5. If the market value of the shares exceeds the sum of their cost base ($10.43) and any incidental costs of disposal, such as brokerage fees and stamp duty, a shareholder makes a capital gain. If the disposal occurs 12 months or more after the AMP shares were deemed to have been acquired on 20 November 1997, the cost base is indexed to take account of inflation. Any net capital gain (the sum of all capital gains for the year of income less capital losses) is included in the shareholder's tax return for the year of income in which the disposal took place.

6. If the disposal occurred before the listing date, no capital loss is allowed. However, if the disposal of the shares occurs on or after the listing date, and the market value of the shares is less than the sum of their cost base and any incidental costs of disposal, a capital loss is made. Indexation of the cost base is not available in calculating a capital loss. The capital loss is either offset against capital gains in the year of income in which the disposal occurred, or carried forward to be offset against capital gains in future years of income.

Example 1

7. *Hayden, a former AMP member, was allocated 150 shares in AMP Limited. He decided to give these shares to his son, Bradley. On 15 May 1998, he handed Bradley an executed share transfer which Bradley forwarded to AMP. Bradley did not pay his father any sale proceeds for the shares. Based on media reports around 15 May 1998 as to the expected listing price of AMP shares, Hayden concluded the market value of the shares to be $15.00. Hayden paid stamp duty of $12.00 on the transfer. Hayden has no other capital gains and no capital losses to offset against the capital gain on the sale of the AMP shares.*

Hayden's capital gain is calculated as follows:

Deemed sale proceeds received (150 x $15.00)			*$2,250.00*
Less	*Cost base (150 x $10.43)*	*$1,564.50*	
	Stamp duty	*$12.00*	*$1,576.50*
Capital gain			*$673.50*

Hayden includes the $673.00 net capital gain in his tax return for the year ended 30 June 1998.

Example 2

8. *Ian, a former AMP member, was allocated 100 shares in AMP Limited. On 1 October 1998, he transferred the shares into his own personal superannuation fund at the suggestion of his financial advisor. The trustee paid Ian $10.43 (the cost base) for each share. The newspapers reported that shares in AMP Limited last traded at $18.00 on that day. Ian paid stamp duty of $10.00 on the transfer. Ian has no other capital gains and no capital losses to offset against the capital gain on the sale of the AMP shares.*

As Ian is considered not to be dealing at arms length with his superannuation fund, he is deemed to have received market value consideration for the transfer, $18.00 rather than the $10.43 paid to him.

Ian's capital gain is calculated as follows:

Deemed sale proceeds received (100 x $18.00)			*$1,800.00*
Less	*Cost base (100 x $10.43)*	*$1,043.00*	
	Stamp duty	*$10.00*	*$1,053.00*
Capital gain			*$747.00*

Ian includes the $747.00 net capital gain in his tax return for the year ended 30 June 1999.

Commissioner of Taxation
1 July 1998

FOI INDEX DETAIL: Reference No. I 1015718 Not previously released in draft form

Related Determinations:

Related Rulings:

Subject Ref: capital gains; capital gains tax; capital losses; CGT cost base; cost base; disposal of shares

Legislative Ref: ITAA36 Pt IIIA; ITAA97 Parts 3-1 and 3-3

Case Ref:

ATO Ref: BRI CG ATD 98/1; NAT 98/6217-0

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