


TR 2015/4A1 - Addendum - Income tax: CGT small business concessions: unpaid present entitlements and the maximum net asset value test

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Addendum

Taxation Ruling

Income tax: CGT small business concessions: unpaid present entitlements and the maximum net asset value test

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It updates Taxation Ruling TR 2015/4 to include reference to Taxation Determination TD 2022/11 *Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'?* which was published on 13 July 2022.

TR 2015/4 is amended as follows:

1. Preamble

Omit the preamble; substitute:

❶ Relying on this Ruling

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

2. Paragraph 1

(a) Omit footnote 1.

(b) After paragraph 1, insert new paragraph 1A:

1A. All legislative references in this Ruling are to the ITAA 1997, unless otherwise indicated.

3. Paragraph 3

(a) Before the table, insert table caption '*Table 1: Definitions of terms used in this Ruling*'.

(b) In the definition of 'sub-trust', omit the second sentence.

(c) Omit footnote 4.

4. Paragraph 12

- (a) Before the table, insert table caption '*Table 2: Net value of CGT assets of Shiny Artichoke Trust*'.
- (b) Omit the first row in the table.

5. Paragraph 13

- (a) Before the table, insert table caption '*Table 3: Net value of CGT assets of sub-trust*'.
- (b) Omit the first row in the table.

6. Paragraph 14

- (a) Before the table, insert table caption '*Table 4: Net value of CGT assets of Emmett*'.
- (b) Omit the first row in the table.

7. Paragraph 15

- (a) Before the table, insert table caption '*Table 5: Net asset value of Shiny Artichoke Trust*'.
- (b) Omit the first row in the table.

8. Paragraph 18

- (a) Before the table, insert table caption '*Table 6: Net value of CGT assets of Shiny Artichoke Trust*'.
- (b) Omit the first row in the table.

9. Paragraph 19

- (a) Before the table, insert table caption '*Table 7: Net value of CGT assets of Emmett*'.
- (b) Omit the first row in the table.

10. Paragraph 20

- (a) Before the table, insert table caption '*Table 8: Net asset value of Shiny Artichoke Trust*'.
- (b) Omit the first row in the table.

11. Paragraph 22

After 'TR 2006/10', insert '*Public Rulings*'.

12. Paragraph 31

In footnote 14, omit '35 of TR 2010/3'; substitute '13 of Taxation Determination TD 2022/11 *Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'?*'.

13. Paragraph 38

- (a) Omit 'TD 2007/14'; substitute 'Taxation Determination TD 2007/14 *Income tax: capital gains: small business concessions: what 'liabilities' are included in the calculation of the 'net value of the CGT assets' of an entity in the context of subsection 152-20(1) of the Income Tax Assessment Act 1997?*'.
- (b) Omit footnote 20.

14. Paragraph 59

- (a) Omit the wording of footnote 35; substitute:

For example, by treating the amount of the UPE as having been paid out and then lent back to the trust, replacing the equitable obligation of the trustee to pay out an amount on demand in satisfaction of the UPE with an obligation at law to repay the loan. Such a loan from the private company can be effected by an agreed set-off in satisfaction of the trustee's obligation to pay the private company its trust entitlement, rather than as a cash transaction. The agreement between the private company beneficiary and the trustee may be an implied agreement. For example, if the private company has knowledge that the trustee has treated its UPE as having been satisfied and a corresponding amount borrowed back (as evidenced, for example, by crediting a loan account in the name of the private company beneficiary) and the private company acquiesces to that treatment, it will be inferred that it has consented to that loan being made.
- (b) Omit the wording of footnote 36; substitute:

Acting pursuant to a term of the trust deed which permits the trustee to pay or apply money to or for the benefit of the beneficiary, the trustee may apply trust funds for the benefit of a private company beneficiary by crediting a loan account in that private company's name and assuming a corresponding obligation to repay the sum so credited. In these circumstances, the relevant trust funds are regarded as having been applied for the benefit of the private company (rather than an entitlement arising that is unpaid) and the private company beneficiary is taken to have made an ordinary loan to the trustee.
- (c) Omit the second sentence; substitute 'In such cases, a liability of the trustee to repay the loan (plus interest, if any) replaces, or arises instead of, the UPE.'

15. Paragraph 69

- (a) In footnote 42, after 'CLR 541', insert 'and McCarthy J in *Commissioner of Inland Revenue v Ward* 69 ATC 6050 at [6071]; (1969) 1 ATR 287 at [313]'.
(b) In footnote 42, omit 'paragraph 34 of TR 2010/3 and'.

16. Paragraph 79

Before the table, insert table caption '*Table 9: Net value of CGT assets summary*'.

This Addendum applies from 13 July 2022.

Commissioner of Taxation

10 August 2022

ATO references

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