



CR 2001/60 - Income tax: capital gains: personal-use assets: Contributors to the Credicare Health Fund

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Class Ruling

Income tax: capital gains: personal-use assets: Contributors to the Credicare Health Fund

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are the following provisions of the *Income Tax Assessment Act 1997* ('ITAA 1997'):

- section 108-5;
- section 108-20; and
- subsection 118-10(3).

Class of persons

3. The class of persons to whom this Ruling applies is the contributors to the Credicare Health Fund.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs

10 to 17 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 7 November 2001, the date of issue of this Ruling. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn and ceases to have effect after 7 November 2002. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into prior to the withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- (a) application for the class ruling dated 14 March 2001; and
- (b) facsimile from Allens Arthur Robinson dated 4 September 2001.

11. Credicare Health Fund ('the Fund') is an unincorporated association which is a registered health benefits organisation under the *National Health Act 1953* ('NHA'). On 8 December 1999 the *Health Legislation Amendment Act (No. 3) 1999* came into effect. Section 17 of this Act inserted a new section 73AA into the NHA. Section 73AA requires registered organisations that are unincorporated as of 8 December 1999 to become incorporated.

12. Credicare Health Fund Ltd ('the New Fund') will be formed as a newly constituted company limited by guarantee. It will be formed afresh with nominal assets and no liabilities on formation. All the current directors of the Fund will be appointed directors of the New Fund.

13. The New Fund will be registered as a health benefits organisation under the NHA.

14. The whole of the business of the Fund will be transferred to the New Fund. This has the effect of all the assets and liabilities, together with membership of the Fund, being transferred from the fund to the New Fund. The practical effect of this for current contributors to the Fund is minimal.

15. No consideration will pass between the New Fund and the Fund for transfer of the business of the Fund.

16. After the transfer, the Fund will be left with no assets and no liabilities. The Fund will then be wound up or deregistered.

17. Under the arrangement to which this Ruling relates the contributor's interest in the Fund cease and they acquire new interests in the New Fund. However, the rights that attach to the new interests remain unaffected.

Ruling

18. The cessation of a contributor's interest in the Fund does not give rise to a capital gain if it was acquired for less than \$10,000. No capital loss will arise from the cessation of the interest.

Explanations

Class of Assets

19. The asset the subject of this ruling is the membership of the Fund with its attached rights. In accordance with Taxation Determination TD 93/86 whether all the rights comprise one single asset or each right is a separate asset will depend on the facts of each case however, the initial approach is to regard the totality of rights as one asset for the purposes of Part IIIA of the *Income Tax Assessment Act 1936* ('ITAA 1936'). The rights to receive health benefits are rights available to the contributors as a result of their membership therefore all the rights comprise one asset.

20. Membership of the Fund is a CGT Asset as defined in subsection 108-5 of the ITAA 1997 namely:

'(b) a legal or equitable right that is not property'.

It is also a personal-use asset as defined by subsection 108-20(2) of the ITAA 1997, being a CGT asset that is used or kept mainly for the contributors' (or the contributors' associates) personal use or enjoyment.

Meaning of Personal-Use

21. The Federal Court in *Favaro v. Commissioner of Taxation* 34 ATR 1; 96 ATC 4975 at 4987 considered the term 'personal-use' in the equivalent provision to subsection 108-20(2) contained in ITAA 1936:

'The expression "personal-use" is used in s160B of the ITAA in contradistinction to use for business or profit making purposes.'

22. This is consistent with the meaning attributed to 'personal-use asset' in Taxation Ruling TR 96/23, paragraph 7.

23. Contributors to the Fund seek to ensure that quality health services will be readily available to their associates and themselves. Clearly, the rights as a contributor to the fund are within the meaning of personal-use.

CGT Exemption

24. Subsection 118-10(3) of the ITAA 1997 provides for a capital gain from a personal-use asset, or part of the asset, to be disregarded if the asset was acquired for \$10,000 or less. It is a factual matter for each of the contributors, as to whether the acquisition was for \$10,000 or less.

25. Subsection 108-20(1) of the ITAA 1997 provides that any capital loss from a personal-use asset is disregarded in working out the net capital gain or net capital loss for the income year.

Detailed contents list

26. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

7 November 2001

Previous draft:

Not previously issued in draft form

Subject references

- CGT exemptions
- personal-use asset

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 96/23; TR 97/16; TD 93/86;

CR 2001/60

Legislative references:

- TAA 1953 Part IVAAA
- NHA 1953 73AA
- ITAA 1936 Part IIIA
- ITAA 1997 108-5
- ITAA 1997 108-20
- ITAA 1997 108-20(1)

- ITAA 1997 108-20(2)
- ITAA 1997 118-10(3)
- LAA 1999 (No. 3) 17

Case references:

- Favaro v. Commissioner of Taxation
34 ATR 1; 96 ATC 4975

ATO References

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