


TD 1999/D51 - Income tax: capital gains: how are the date of acquisition and the acquisition cost of bonus shares determined if the bonus shares are issued in relation to shares held by a deceased person at the date of their death and the bonus shares are issued after the date of death?

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This document has been finalised by TD 2000/11.



Draft Taxation Determination

Income tax: capital gains: how are the date of acquisition and the acquisition cost of bonus shares determined if the bonus shares are issued in relation to shares held by a deceased person at the date of their death and the bonus shares are issued after the date of death?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the ATO.

1. The date of acquisition and the acquisition cost of the bonus shares are determined having regard to the provisions of Subdivision 130-A of the *Income Tax Assessment Act 1997* ('the 1997 Act') and subsections 130-20(2) and (3) of the *Income Tax (Transitional Provisions) Act 1997* as applicable, as well as the general capital gains provisions in Parts 3-1, 3-3 and 3-5 of the 1997 Act.
2. Division 128 does not apply to the acquisition of the bonus shares, because they were not CGT assets the deceased owned just before dying and therefore did not form part of the estate of the deceased (Taxation Determination TD 93/38).

Example 1

3. *You own shares and the company issues bonus shares and some part of the bonus shares is a dividend (or is taken to be a dividend under subsections 45(2) or 45C(1) of the Income Tax Assessment Act 1936 ('the 1936 Act')):*
 4. *On 6 January 1998, Donald purchased 1,000 shares in BAM Ltd for \$2 each, cost \$2000. Donald died on 15 April 1999 and the 1,000 shares in BAM Ltd formed part of the deceased estate.*
 5. *On 10 May 1999, BAM Ltd declared a dividend of 10 cents per share and satisfies the payment of that dividend by issuing 50 bonus shares.*
- (i) **Acquisition date of the bonus shares.**
 6. *The bonus shares are acquired for CGT purposes by the legal personal representative ('LPR') or beneficiary on 10 May 1999. The bonus shares are acquired at the time of their issue.*

(ii) Acquisition cost of the bonus shares.

7. The acquisition cost of the bonus shares is the amount of \$100 (or \$2 per bonus share) assessed as a dividend [subsection 130-20(2) of the 1997 Act]. No part of the cost of the original 1,000 shares (i.e. from Donald's estate) is apportioned to the bonus shares (Taxation Ruling IT 2603, paragraphs 31 to 38).

Example 2

8. No part of the bonus share is a dividend (or is taken to be a dividend under subsections 45(2) or 45C(1) of the 1936 Act):

9. Assume that the facts in Example 1 are unchanged, except that the 50 bonus shares in BAM Ltd issued to the LPR or beneficiary on 10 May 1999 are issued out of the share capital account of the company. In this case, no part of the bonus shares is a dividend (paragraph (d) of the definition of 'dividend' in subsection 6(1) of the 1936 Act).

(i) Acquisition date of the bonus shares.

10. The bonus shares are deemed to be acquired by the LPR or the beneficiary (being 'the shareholder', for the purposes of subsection 130-20(3) of the 1997 Act), when you acquired the original shares (subsection 130-20(3) of the 1997 Act). The original shares are deemed to have been acquired by the LPR or beneficiary at the date of Donald's death i.e., 15 April 1999 (section 128-15 of the 1997 Act). Thus, the bonus shares are also deemed to have been acquired on 15 April 1999.

(ii) Acquisition cost of the bonus shares.

11. Subsection 130-20(3) of the 1997 Act determines the acquisition cost of the bonus (and original) shares. It is appropriate in this case for the acquisition cost of the original shares to be spread evenly over the original and bonus shares.

12. The acquisition cost of the original shares is determined in accordance with section 128-15 of the 1997 Act. In effect, the \$2,000 cost of the original shares to Donald is apportioned over the 1,050 shares (i.e., \$1.90 per share).

13. The acquisition cost of each original share is therefore \$1.90 and, because no amount was actually paid by the LPR or the beneficiary for the bonus shares, the acquisition cost of each bonus share is also \$1.90.

Note:

14. This Taxation Determination rewrites and replaces Taxation Determination TD 95/53. There is no material change in this Taxation Determination to the views expressed in TD 95/53 apart from updating it with the rewritten income tax law in the 1997 Act and with recent Corporations Law changes.

15. Parts 3-1, 3-3 and 3-5, Subdivision 130-A, sections 128-15 and 995-1 and subsections 130-20(2) and 130-20(3) of the 1997 Act, to which this Determination refers, express the same ideas, respectively, as Part IIIA, Divisions 8 and 8A, sections 160ZYH and 160X, subsection 6(1) and paragraphs 160X(5)(b) and 160ZYG(b) of the 1936 Act.

Your comments

We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

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Commissioner of Taxation
4 August 1999

Previously released as:
TD 95/53

Subject references:
acquisition, acquisition cost, acquisition date, bonus shares, death; effect of death, shares

Legislative references:

The 1997 Act	The 1936 Act
1. Part 3-1 Part 3-3 Part 3-5 <input type="checkbox"/>	1. Part IIIA
2. Subdivision 130-A and subdivision 130-A of the <i>Income Tax (Transitional Provisions) Act 1997</i>	2. Division 8 Division 8 A
3. Section 128-15	3. Section 160X Paragraph 160X(5)(b)
4. Section 995-1	4. Subsection 6(1)
5. Subsection 130-20(2)	5. Section 160ZYH
6. Subsection 130-20(3)	6. Paragraph 160ZYG(b)
7. No corresponding provision	7. Subsection 45(2)
8. No corresponding provision	8. Subsection 45C(1)

ATO references:
NO 99/9892-6
BO NOR CGT 5016/586/47
ISSN: 1038 - 8982