


***TD 1999/D90 - Income tax: capital gains: for the purposes of CGT event B1, what is meant by the expression 'at the end of an agreement' in section 104-15 of the Income Tax Assessment Act 1997 ?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D90 - Income tax: capital gains: for the purposes of CGT event B1, what is meant by the expression 'at the end of an agreement' in section 104-15 of the Income Tax Assessment Act 1997 ?*

This document has been finalised by TD 1999/78.

## Draft Taxation Determination

### **Income tax: capital gains: for the purposes of CGT event B1, what is meant by the expression ‘at the end of an agreement’ in section 104-15 of the *Income Tax Assessment Act 1997*?**

#### ***Preamble***

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

1. CGT event B1 (about use and enjoyment before title passes) in section 104-15 of the *Income Tax Assessment Act 1997* happens if you enter into an agreement under which an entity obtains use and enjoyment of a CGT asset you own, the title to which will or may pass to them at the end of the agreement.
2. An agreement may come to an end for the purposes of CGT event B1 either:
  - a) at the end of the period for which the agreement runs; or
  - b) during that period.
3. This is so whether the term of the agreement is for a fixed period, for a defined period, or for a period that is to end on the occurrence of a particular event.
4. If it is possible that title will or may pass at the end of such an agreement, CGT event B1 is triggered and you make any capital gain or capital loss when the other entity first obtains the use and enjoyment of your asset.
5. If the asset does pass, in fact, during or at the end of the period (i.e., at the end of the agreement), there is no further impact at that time.
6. If the asset does not pass, in fact, during or at the end of the period (i.e., at the end of the agreement), any capital gain or loss you made when the agreement was entered is disregarded: subsection 104-15(4).

#### ***Example 1***

7. *Perry allows his son use and enjoyment of the family holiday house as and when his son wishes with an expectation that some time in the future, when his son can afford to buy it, the title of the house will pass to him. This type of loose family arrangement does not fall within CGT event B1 because there is no agreement under which title will or may pass and because there is no specific point of time or particular occurrence when the arrangement will end.*

## **Example 2**

8. Bill leases a parcel of land, giving him use and enjoyment of the land. As part of the agreement with the lessor, Bill is granted a right of first refusal for the acquisition of the land, so that if the lessor decides to sell the property, he has to offer it to Bill first. This situation is not covered by CGT event B1 because the agreement is not one under which title will or may pass at the end of the agreement.

## **Example 3**

9. Jim owns a boat that his neighbour, Ken, is interested in buying but Ken wants to try out the boat first. Jim agrees to hire the boat to Ken and the agreement provides that Ken will buy the boat at the end of three years unless Ken decides to buy the boat sooner. Jim agrees that, if Ken does buy it, Jim will apply the hire fees against the agreed purchase price. Some months later, Ken inherits some money and approaches Jim to take the boat. The sale is concluded. Because there was an agreement under which Ken had a right to the use and enjoyment of the boat and under that agreement title to it would or might pass to Ken when the hire agreement ends – which could be after three years or within that period - CGT event B1 occurs when Ken first obtained the use and enjoyment of the boat and not when Jim actually transferred the boat to him. Had the three years passed without Ken buying the boat, any capital gain or capital loss Jim made from the CGT event would be disregarded.

## **Your comments**

10. 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**

25 August 1999

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*Previous draft:*

Not previously released in draft form

*Related Rulings/Determinations:*

*Subject references:*

agreement; asset; capital gains; CGT asset; CGT event; CGT event B1; end; hire purchase; lease; option; title; use and enjoyment

*Legislative references:*

ITAA 1997 104-15; ITAA 1997 104-15(4)

*Case references:*

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ATO references:

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