


TD 1999/D94 - Income tax: capital gains: can you acquire a contractual or other legal or equitable right even though there may be no tax consequences for the entity creating the right?

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This document has been finalised by TD 1999/82.

Draft Taxation Determination

Income tax: capital gains: can you acquire a contractual or other legal or equitable right even though there may be no tax consequences for the entity creating the right?

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. Yes. CGT event D1 (about creating contractual or other rights) in section 104-35 of the *Income Tax Assessment Act 1997* applies if one entity creates a contractual right or other legal or equitable right in another entity. The event still occurs even if there is no capital gain or loss for the entity creating the right (paragraph 102-23(a)).
2. Although there may be no tax consequences for the entity creating the right, you acquire the right 'when the contract is entered into or the right created' and you do so under the general acquisition rules in subsection 109-5(2).

Example 1

3. *Alec contracts with you to be your sales manager for the next two years on a commission basis. You don't pay any inducement or other payment to him for entering into the contract, nor do you incur any expenses in connection with the creation of the contractual right. Alec has created a contractual right in you to require him to perform the duties as sales manager for the period of two years. Alec has not made a capital gain or a capital loss because he does not receive any proceeds or incur any incidental costs in relation to the event (CGT event D1 in subsection 104-35(3)). Even though no proceeds are received, the market value substitution rule does not apply (paragraph 116-30(3)(b)). You acquire the contractual right at the time of its creation (subsection 109-5(2)). Although you do not pay any inducement for the right, the market value substitution rule does not apply to the first element of the cost base of the right and you are not taken to have paid or given anything for it (subsection 112-20(3) item 3).*

Example 2

4. *A tax exempt entity creates rights in you to exploit certain natural resources. You pay \$750,000 for the rights. The grant of the rights has a provision allowing you to assign your rights under the agreement. Two years after the agreement is in place you assign your rights to a third party for \$1m. Even though the grantor of the rights is exempt from tax on the original transaction, you acquire a CGT asset when you become the owner of the contractual rights (section 109-5). When you assign the rights for \$1m, you dispose of a CGT asset and CGT event A1 in section*

104-10 applies. You make a capital gain of \$250,000 (\$1m capital proceeds less \$750,000 cost base (ignoring indexation for the two years)).

Your comments

5. 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.

Comments by Date: 24 September 1999
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Commissioner of Taxation

25 August 1999

Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

Subject references:

acquisition; capital gains; CGT asset; CGT event; CGT event A1; CGT event D1; contractual rights; creation of rights; equitable rights; legal rights; rights

Legislative references:

ITAA 1997 104-10; ITAA 1997 104-35; ITAA 1997 104-35(3); ITAA 1997 109-5(2); ITAA 1997 112-20(3); ITAA 1997 116-30(3)(b)

Case references:

ATO references:

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BO CGT disposal summit 1999; CPL99/77

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