


TD 1999/D95 - Income tax: capital gains: if a trust becomes a resident trust when is it taken to have acquired its CGT assets? If a trust stops being a resident trust, when does CGT event I2 in section 104-170 of the Income Tax Assessment Act 1997 happen?

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This document has been finalised by TD 1999/83.

Draft Taxation Determination

Income tax: capital gains: if a trust becomes a resident trust when is it taken to have acquired its CGT assets? If a trust stops being a resident trust, when does CGT event I2 in section 104-170 of the *Income Tax Assessment Act 1997* happen?

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.

Acquisition - trust becomes a resident trust

1. If a trust becomes a resident trust, section 136-45 of the *Income Tax Assessment Act 1997* provides that CGT assets the trustee owned just before the trust became a 'resident trust for CGT purposes' are taken to have been acquired by the trustee at the time the trust became a 'resident trust for CGT purposes' (other than CGT assets having the necessary connection with Australia or that the trustee acquired before 20 September 1985).
2. Section 995-1 provides that a trust (other than a unit trust) is a 'resident trust for CGT purposes' for an income year if, at any time during the year, the trustee is an Australian resident or its central management and control is in Australia. For a unit trust, special requirements need to be satisfied depending on whether any property of the trust is situated, or whether the trust carries on a business, in Australia.
3. A trust becomes a 'resident trust for CGT purposes' at the time during an income year when the requirements of the definition of that expression (e.g., residency of the trustee or central management and control of the trust in Australia) are satisfied. Once a trust satisfies those requirements and becomes a 'resident trust for CGT purposes', its CGT assets (except those mentioned above) are taken to have been acquired at that time at their market value.
4. A trust that becomes a 'resident trust for CGT purposes' during an income year does not make any capital gain or capital loss from any CGT event involving a CGT asset without the necessary connection with Australia that happens from the beginning of the income year until the time at which it becomes a resident trust, unless Division 136 (about non-residents) applies.

CGT event I2 - trust stops being a resident trust

5. If a trust stops being a 'resident trust for CGT purposes', CGT event I2 in section 104-170 happens. The time of the event is when the trust stops being a 'resident trust for CGT purposes': subsection 104-170(2).

6. A trust stops being a 'resident trust for CGT purposes' at the time during an income year when the requirements of the definition of that expression are no longer satisfied. For a trust that is not a unit trust, for example, it stops being a 'resident trust for CGT purposes' when the trustee stops being an Australian resident or the central management and control of the trust is no longer in Australia.

7. A trust that stops being a 'resident trust for CGT purposes' during an income year does not make any capital gain or capital loss from any CGT event involving a CGT asset without the necessary connection with Australia that happens from the time at which it stops being a resident trust in the income year until the end of that income year, unless Division 136 (about non-residents) applies.

Note

8. This construction does not affect the operation of Division 6 of the *Income Tax Assessment Act 1936* or other general provisions of the income tax law.

Example 1

9. *The trustee of a US discretionary trust becomes a resident of Australia on 1 April 1999. The trust holds Australian and US assets. All US assets acquired on or after 20 September 1985 are deemed to have been acquired on 1 April 1999 and the market value of each asset at that time becomes the first element of its cost base. The trust can make a capital gain or capital loss from any CGT event that happens on or after 1 April 1999.*

Example 2

10. *An Australian discretionary trust ceases to be a resident trust for CGT purposes on 31 March 1999. The trust holds Australian and UK assets. Any CGT asset acquired on or after 20 September 1985 or having the necessary connection with Australia is taken to be disposed of on the date the trust ceases to be a resident. The trustee makes a capital gain if the market value of a CGT asset, as at 31 March 1999, is more than the asset's cost base. A capital loss is made if the market value, as at 31 March 1999, is less than the asset's reduced cost base. The trust does not make any capital gain or capital loss from any CGT event involving a CGT asset without the necessary connection with Australia that happens on or after 31 March 1999, unless Division 136 (about non-residents) applies.*

Your comments

11. **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

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Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

Subject references:

acquisition; CGT asset; CGT event; CGT event I2; cost base; income year; resident; trust; trust
residency; unit trust

Legislative references:

ITAA 1997 104-170; ITAA 1997 104-170(2); ITAA 1997 136-45; ITAA 1997 995-1

Case references:

ATO references:

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BO CGT disposal summit 1999;

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