


TD 96/D16 - Income tax: self assessment: can a person obtain a private ruling in terms of Part IVAA of the Taxation Administration Act 1953 (TAA) if the question raised in the private ruling concerns the capital gains tax (CGT) consequences of a contract entered into on or after 1 July 1992 for the disposal of an asset acquired before that date?

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This document has been finalised by TD 97/22.



Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: self assessment: can a person obtain a private ruling in terms of Part IVAA of the *Taxation Administration Act 1953* (TAA) if the question raised in the private ruling concerns the capital gains tax (CGT) consequences of a contract entered into on or after 1 July 1992 for the disposal of an asset acquired before that date?

1. Yes.

2. Sections 14ZAF and 14ZAG of the TAA provide that a person may apply for a ruling on the way in which, in the Commissioner's opinion, a tax law or tax laws would apply in respect of a year of income in relation to an arrangement.

3. Section 13 of the *Taxation Laws Amendment (Self Assessment) Act 1992* provides that an application under section 14ZAF or 14ZAG of the TAA must not relate to an arrangement that began to be carried out before 1 July 1992.

4. To determine whether a taxpayer is entitled to obtain a private ruling, we need to identify the arrangement to which the ruling relates and to ascertain if that arrangement is one that began to be carried out **on or after** 1 July 1992. By section 14ZAC of the TAA, an arrangement is taken to have begun to be carried out if a contract is entered into requiring the arrangement to be carried out.

5. The definition of 'arrangement' in section 14ZAAA of the TAA is very broad and includes 'action ... transaction ... agreement' and 'part of an arrangement'. The arrangement may be being carried out, have been carried out or be a proposed arrangement (section 14ZAI of the TAA).

6. The disposal of an asset, being 'action', a 'transaction' or an 'agreement', is an arrangement in its own right for which there may be CGT consequences. Alternatively, the disposal may be a part of an arrangement if, for instance, the disposal formed part of a wider transaction. To resolve the substantive question, the circumstances of the disposal of the asset in the year of income in which the disposal occurs and to which the ruling relates need to be considered, to see whether Part IIIA of the *Income Tax Assessment Act 1936* (ITAA) applies.

7. Even though an asset may have been acquired before 1 July 1992, a private ruling in terms of Part IVAA of the TAA can be obtained if the disposal of the asset - being the arrangement or part of the arrangement - began to be carried out after 1 July 1992. On the facts in the question, the disposal began to be carried out **on or after** 1 July 1992.

Note 1:

Part IIIA of the ITAA cannot apply unless and until there is a disposal (including a deemed disposal) of an asset to which the Part applies. Consequently, there is no tax law that can apply unless there is an arrangement involving such a disposal that has been carried out, or is being carried out, or a proposed arrangement involving such a disposal. If such a disposal began to be carried out before 1 July 1992, a person can not obtain a private ruling in relation to the disposal.

Note 2:

As to the acquisition of an asset before 1 July 1992, an arrangement in terms of section 14ZAAA of the TAA also includes such an acquisition. On the disposal or proposed disposal of the asset, a person may not apply, under sections 14ZAF or 14ZAG of the TAA, for a private ruling about the application of a tax law or tax laws to the acquisition of the asset because the arrangement or part of the arrangement (the acquisition of the asset) began to be carried out before 1 July 1992.

Commissioner of Taxation6/11/96

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