


TD 96/D4 - Income tax: capital gains: how does Division 19B of Part IIIA of the Income Tax Assessment Act 1936 apply to a share value shifting arrangement involving a share value shift from shares held by a person to shares held by an associate which is matched by a corresponding value shift from the associate's shares to that person's shares?

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This document has been finalised.

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Draft Taxation Determination

Income tax: capital gains: how does Division 19B of Part IIIA of the *Income Tax Assessment Act 1936* apply to a share value shifting arrangement involving a share value shift from shares held by a person to shares held by an associate which is matched by a corresponding value shift from the associate's shares to that person's shares?

1. The object of Division 19B is to remove the capital gains tax (CGT) advantages of share value shifting arrangements.
2. In some share value shifting arrangements, value is shifted both within a person's own shares and to an associate's shares. If the value shifted to the associate's shares is matched by a corresponding shift of value from that associate's shares, the net effect is a shift in value within the same person's shares. In such cases, the object of Division 19B is best served by applying that Division as though value is shifted only within the same person's shares.
3. The share value shifts contemplated by this Determination occur if:
 - (a) the same persons hold all of the shares that have increased in value (the increased value shares) and all of the shares that have decreased in value (the decreased value shares); and
 - (b) the amount of the increase in value of the increased value shares held by each party to the value shift is equal to the amount of the decrease in value of that party's decreased value shares.
4. Such a share value shift occurs if a company issues new shares on a pro rata basis and below market value to all existing shareholders if they are also associates. It may also occur if the rights attaching to existing shares in a company held by all shareholders who are also associated are varied (e.g., by converting voting-only shares to ordinary shares).
5. In these situations, we will treat the share value shift as a number of separate share value shifting arrangements, each arrangement being a shift in value from the decreased value shares held by a person to the increased value shares held by the same person.

Example:

A and B, the sole shareholders of a company, hold one post-CGT share each in the company, fully paid with a paid-up value of \$10. A and B had each paid \$12 for their share. The company resolves to issue, for \$10 consideration, a new share to both A and B. As a result, there is a share value shift from the original shares to the new shares (the relevant increase in value of the new shares being their market value less the amount paid (subparagraph 160ZZRM(1)(c)(ii)).

If the share value shift was treated as occurring under a single arrangement, there would be a share value shift within each of A's and B's own shares, and a shift to each other's shares. The consequences would be that:

- half of the increase in value of each of A's and B's new share would be deemed to be from a share held by a different person (a different person share, being the original share held by the other shareholder); and*
- the other half of the increase would be deemed to be from A's or B's own original share.*

However, because the requirements in paragraph 3 above are satisfied, the value shift will be deemed to comprise two separate arrangements:

- a share value shift from A's original share to A's new share; and*
- a share value shift from B's original share to B's new share.*

Under this approach, there are no different person shares which can trigger a capital gain. Therefore, only cost base adjustments are required to be made to the shares (under subsection 160ZZRQ(3) for the original shares and subsection 160ZZRQ(4) for the new shares).

If the market value of each original share was \$120 before the value shift and \$65 after the value shift (each of the new shares is also worth \$65) then, in relation to each shareholder, Division 19B will apply as follows:

- under paragraph 160ZZRQ(3)(b), the cost base of the original share will be reduced by:*

$$\left(\frac{\$55}{\$55} \times \frac{\$55}{\$120} = \frac{11}{24} \right) \times \frac{\$12}{1} = \$5.50 \text{ per share}$$
- under paragraphs 160ZH(1)(a) and 160ZZRQ(6)(c), the cost base of the new shares at the time of their issue will be the total amount paid for the shares and the amount of the reduction in the cost base of the original shares (i.e., \$10 + \$5.50 = \$15.50).*

Commissioner of Taxation

8 May 1996

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Related Determinations:

Related Rulings:

Subject Ref: arrangement; capital gains; cost base; matching value shifts; share value shifting; shares

Legislative Ref: ITAA Pt IIIA; ITAA Div 19B; ITAA 160ZH(1)(a); ITAA 160ZZRM(1)(c)(ii); ITAA 160ZZRQ(3); ITAA 160ZZRQ(3)(b); ITAA 160ZZRQ(4); ITAA 160ZZRQ(6)(c)

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