


***TD 97/D10 - Income tax: when can a 'public unit trust' carry out sub-underwriting of share issues and still carry on a business wholly consisting of 'eligible investment business', for the purposes of Division 6C of the Income Tax Assessment Act 1936?***

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This document has been finalised by TD 98/4.

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.

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## Draft Taxation Determination

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### **Income tax: when can a 'public unit trust' carry out sub-underwriting of share issues and still carry on a business wholly consisting of 'eligible investment business', for the purposes of Division 6C of the *Income Tax Assessment Act 1936*?**

1. Public unit trusts are taxed as companies under Division 6C when, amongst other things, they are a trading trust carrying on a trading business. A 'trading business' is defined to be any business 'that does not consist wholly of eligible investment business' (section 102M). 'Eligible investment business' is defined in section 102M to cover certain activities, one of which is 'investing in or trading in ... shares in a company' (subparagraph 102M(b)(iii)).
2. A public unit trust carrying on a business can carry out sub-underwriting of share issues **without** their business becoming a 'trading business'. This can occur where the sub-underwriting is conducted in such a way that it is properly part of the business of 'investing in or trading in' shares in a company, and undertaken for this purpose, and this business otherwise consists wholly of 'eligible investment business' activities.
3. However, if a public unit trust carries out sub-underwriting as part of its business, in a way where it is not for the purpose of it 'investing or trading in' shares, then the sub-underwriting is not part of a business that does consist wholly of 'eligible investment business', and the business is a 'trading business'. If the other conditions are satisfied then the public unit trust is taxed as a company under Division 6C.

#### ***Example***

4. *'C' Public Unit Trust participates in sub-underwriting a float of shares in B Co Ltd, where the float is going to be fully subscribed. 'C' Public Unit Trust is guaranteed the right to a certain number of shares, consistent with its long term investment strategy. Fees derived from acting as sub-underwriter are relatively insignificant in relation to the actual and proposed activities of the Trust. The Trust's business does consist of 'investing in or trading in' shares in companies, along with other 'eligible investment business' activities. Sub-underwriting on this occasion facilitates the acquisition of shares in B Co Ltd and does not cause the trust to be carrying on a 'trading business' for the purposes of Division 6C.*

**Your comments**

8. If you wish to comment on this draft Determination, please send your comments by **2 January 1998** to:

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**Commissioner of Taxation**

26 November 1997

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[Related Determinations:](#)

[Related Rulings:](#)

[Subject Ref:](#) eligible investment business; public trading trusts; public unit trusts; trusts

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