

TAXATION RULING NO. IT 2530

INCOME TAX : CAPITAL GAINS : CHANGE IN THE UNDERLYING
OWNERSHIP OF ASSETS IN A PUBLICLY TRADED UNIT TRUST :
ISSUE OF NEW UNITS IN UNIT TRUSTS AND NEW SHARES IN
COMPANIES : INTERPOSED ENTITIES : CALCULATION OF
CHANGE IN MAJORITY UNDERLYING INTERESTS

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011208	CAPITAL GAINS PUBLIC COMPANIES PUBLICLY TRADED UNIT TRUSTS	160ZZS

OTHER RULINGS ON TOPIC : IT 2340, IT 2361

PREAMBLE Following Taxation Ruling No. IT 2361 which deals with the application of section 160ZZS of the Income Tax Assessment Act 1936 to public companies, consideration has now been given to the circumstances in which changes in unitholdings in a publicly traded unit trust will be required to be examined in order to determine whether there has been a change of 50 per cent or more in the underlying interests in the assets of the unit trust. Consideration has also been given to the effect of section 160ZZS where a unit trust issues additional units or a company issues additional shares, the application of the section to certain interposed entities and the calculation of changes in majority underlying interests.

2. In this ruling a publicly traded unit trust is one the units in which are listed for quotation in the official list of a stock exchange in Australia or elsewhere, or are ordinarily available for subscription or purchase by the public.

3. As noted in Taxation Ruling No. IT 2361, section 160ZZS is similar in its terms to section 80A (Losses of Previous Years). The sections call for the Commissioner of Taxation to be satisfied as to, or to consider it reasonable to assume, the continuity of beneficial ownership of assets so as not to invoke the application of anti-avoidance safeguards. Where the Commissioner is so satisfied under section 160ZZS, assets acquired before 20 September 1985 will remain outside the scope of the tax on capital gains.

4. By leaving scope for the Commissioner to conclude that it is reasonable to assume that there has been the requisite continuity, section 160ZZS recognises that there can be practical difficulties in identifying with complete accuracy

changes in underlying interests. In particular it could present considerable difficulty in the case of unit trusts with large numbers of unitholders where units are constantly changing hands.

RULING Changes in unitholdings in a publicly traded unit trust

5. Section 160ZZS will have comparable application in relation to publicly traded unit trusts as that outlined in Taxation Ruling No. IT 2361 for public companies. Normal transactions in units of a publicly traded unit trust which are not associated with activity in the nature of a take-over or merger are not required to be examined in applying section 160ZZS. However, in the case of major changes in the ownership of units which occur outside the conduct of normal trading, careful examination will be required, in the course of which changes in unitholdings that have occurred during normal trading will be taken into account as well as those related to the events that caused the examination to be made.

Issue of additional units or shares

6. The issue of additional units in a unit trust or additional shares in a company is for these purposes considered not to be part of normal trading of units or shares. Where there is such an issue it will be appropriate to carry out a factual examination to determine whether there has been a continuity of majority underlying interests in the assets of the unit trust or company. Where, as a result of the issue of additional units in a unit trust or additional shares in a company, a change of 50 per cent or more occurs in the underlying ownership of assets of the unit trust or company, section 160ZZS would operate to deem assets of the unit trust or company which were acquired before 20 September 1985 to have been acquired on or after that date.

7. As noted in Taxation Ruling No. IT 2340, where an asset is deemed by section 160ZZS to have been acquired after 19 September 1985, the asset will be taken to have been acquired on the date on which the continuity of beneficial ownership in the asset of more than 50 per cent ceased to be maintained. The cost base for the purposes of determining future capital gains and losses on realisation of such an asset will be the market value of the asset on the date on which the asset is taken to have been acquired by the application of section 160ZZS.

Application to interposed entities

8. The terms "underlying interest" and "majority underlying interests" have the same meanings as they have in Subdivision G of Division 3 of Part III of the Act - which dealt with the income tax treatment of interest in relation to certain "negatively geared" investments in rental property. Underlying interests mean beneficial interests held by natural persons, whether directly or through one or more interposed entities. The clear policy of the law requires that interposed entities

be "looked through" to determine whether there has been a change in the effective interests of natural persons in the asset.

9. The principles outlined in Taxation Ruling No. IT 2361 and in paragraphs 5 to 7 of this Ruling may be applied to any interposed entities that are public companies or publicly traded unit trusts. For example, a public company may own shares in private company A; private company A may own units in a publicly traded unit trust; and the publicly traded unit trust may own shares in private company B. When examining changes in shareholdings in private company B for the purposes of section 160ZZS it may be assumed that both the public company and the publicly traded unit trust have maintained the requisite continuity if there have only been normal transactions in the shares of the public company and in the units of the publicly traded unit trust which are not associated with take-over or merger activities. A detailed examination, however, would still have to be made of changes in shareholdings in private company A.

Calculation of change in majority underlying interests

10. If natural persons who immediately before 20 September 1985 held more than one half of the underlying interests in an asset continue to hold more than one half of the underlying interests at all times on and after that date, there will be no change in the majority underlying interests in the asset for the purposes of section 160ZZS. In these circumstances a change in the proportions in which the natural persons held interests in the asset would not have a bearing on the application of section 160ZZS. The following example illustrates this point:

- . Immediately before 20 September 1985 underlying interests in an asset of a company were owned by four natural persons in the following proportions -
 - A - 90%
 - B - 5%
 - C - 3%
 - D - 2%.

- . Following a change in the shareholding of the company after 20 September 1985, the underlying interests in the asset were owned by natural persons in the following proportions -
 - A - 1%
 - B - 2%
 - C - 48%
 - D - 0%
 - E - 49%.

- . The natural persons who owned underlying interests both immediately before 20 September 1985 and after the change in ownership were A, B and C. Immediately before 20 September 1985 A, B and C between them owned

more than one half of the underlying interests (i.e., 98%). After the change A, B and C between them still owned more than one half of the underlying interests (i.e., 51%). Accordingly, more than one half of the underlying interests in the company's asset continued to be held by the same persons. Section 160ZZS would therefore not apply to deem the asset acquired by the company before 20 September 1985 to have been acquired on or after that date.

COMMISSIONER OF TAXATION
4 May 1989