PS LA 2003/12 - Capital gains tax treatment of the trustee of a testamentary trust

This cover sheet is provided for information only. It does not form part of *PS LA 2003/12 - Capital gains tax treatment of the trustee of a testamentary trust*

This document has changed over time. This version was published on *1 February 2024*

This practice statement was originally published on 12 November 2003. Versions published from 14 December 2011 are available electronically - refer to the online version of the practice statement. Versions published prior to this date are not available electronically. If needed, these can be requested by emailing TCNLawPublishingandPolicy@ato.gov.au .

Generated on: 30 November 2026, 04:13:59 AM

Australian Government
Australian Taxation Office

PS LA 2003/12
Capital gains tax treatment of the trustee of a testamentary trust

This Law Administration Practice Statement outlines our administrative practice of treating the trustee of a testamentary trust in the same way as a legal personal representative for capital gains tax purposes.

This Practice Statement is an internal ATO document and is an instruction to ATO staff.

Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Practice Statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

---

1. What is this Practice Statement about?

This Practice Statement confirms the Commissioner's long-standing administrative practice of treating the trustee of a testamentary trust in the same way as a legal personal representative for the purposes of Division 128 of the *Income Tax Assessment Act 1997* (ITAA 1997), in particular subsection 128-15(3).

2. What is the effect of the practice for the trustee of a testamentary trust?

Broadly stated, the ATO's practice is to not recognise any taxing point in relation to assets owned by a deceased person until they cease to be owned by the beneficiaries named in the will (unless there is an earlier disposal by the legal personal representative or testamentary trustee to a third party or CGT event K3 applies).

3. What is the effect of the practice for a beneficiary?

The cost base and reduced cost base of the asset in the hands of the beneficiary is calculated in the same way as it would have been if the asset had passed to them from the deceased's legal personal representative.

If the deceased acquired the asset before 20 September 1985 (that is, pre-CGT), the acquisition cost will be equal to the market value at the date of the deceased's death. If the deceased acquired the asset on or after 20 September 1985, the beneficiary's acquisition cost will be determined in accordance with table items 1, 2, 3 or 3A of subsection 128-15(4) of the ITAA 1997.

Example 1

Mr Smith died in 2001. At that time, he owned some land which he had acquired in 1995. His will provided that the land was to be held on trust for his 2 sons until they had both turned 18. At the time of his death, the children were 10 and 8 years old.

In 2012, the trustee of the trust created by Mr Smith's will transferred the land to his sons. The Commissioner accepts that the transfer did not result in a CGT event happening to the trustee if the children agree that their acquisition cost for the asset is equal to the trustee's cost base.

Example 2

Mr Smith died in 2001. At that time, he owned a variety of assets acquired after 19 September 1985. His will provides that the assets are to be held by the trustee of a trust created under his will. The trustee can distribute those assets at his absolute discretion among a wide range of objects including trustees of various trusts.

In 2012, the trustee of the testamentary trust validly transferred some of the assets to Mr Smith's children and some to the trustee of another trust. The Commissioner accepts that the transfers did not result in a CGT event happening to the trustee of the testamentary trust if the beneficiaries agree that their acquisition cost for the assets is equal to the trustee's cost base.

In 2014, the trustee of the beneficiary trust (itself a discretionary trust) transfers one of the assets to one of its beneficiaries. CGT event A1 happens at the time of the transfer.

Date issued: 12 November 2003

Date of effect: ongoing

Amendment history

1 February 2024

Part	Comment
All	Minor changes made to style and formatting.

27 August 2015

Part	Comment
All	Updated to new LAPS format and style.

10 April 2014

Part	Comment
Preamble	Preamble updated as announced on 13 December 2013 that the measure will not proceed.
New paragraph 4	Inserted provide further clarity on the administrative practice.
Footnote 1	Omitted.

14 December 2011

Part	Comment
Preamble	Insert 2 paragraphs related to the 2011–12 Budget announced amendments to capital gains tax (CGT) provisions

29 September 2006

Part	Comment
Paragraph 4	Insert 'which is now repealed, but ...' in reference to section 160X of the *Income Tax Assessment Act 1936*.

References

Legislative references	ITAA 1997 Div 128 ITAA 1997 128-15(3) ITAA 1997 128-15(4)
File references	1-5DVJRWK

Business line: PW

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).