


TD 1999/83 - Income tax: capital gains: if a trust:(a) becomes a resident trust - when is it taken to have acquired its CGT assets? (b) stops being a resident trust - when does CGT event I2 in section 104-170 of the Income Tax Assessment Act 1997 happen?

 This cover sheet is provided for information only. It does not form part of *TD 1999/83 - Income tax: capital gains: if a trust:(a) becomes a resident trust - when is it taken to have acquired its CGT assets? (b) stops being a resident trust - when does CGT event I2 in section 104-170 of the Income Tax Assessment Act 1997 happen?*

Taxation Determination

Income tax: capital gains: if a trust:

- (a) becomes a resident trust - when is it taken to have acquired its CGT assets?**
- (b) stops being a resident trust - when does CGT event I2 in section 104-170 of the *Income Tax Assessment Act 1997* happen?**

Preamble

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Trust becomes a resident trust

1. If a trust becomes a resident trust, section 136-45 of the *Income Tax Assessment Act 1997* provides that CGT assets the trustee owned just before the trust became a 'resident trust for CGT purposes' are taken to have been acquired by the trustee at the time the trust became a 'resident trust for CGT purposes' (other than CGT assets having the necessary connection with Australia or that the trustee acquired before 20 September 1985).
2. Section 995-1 provides that a trust (other than a unit trust) is a 'resident trust for CGT purposes' for an income year if, at any time during the year, the trustee is an Australian resident or its central management and control is in Australia. For a unit trust, special requirements need to be satisfied depending on whether any property of the trust is situated, or whether the trust carries on a business, in Australia.
3. A trust becomes a 'resident trust for CGT purposes' at the time during an income year when the requirements of the definition of that expression (e.g., residency of the trustee or central management and control of the trust in Australia) are satisfied. Once a trust satisfies those

requirements and becomes a 'resident trust for CGT purposes', its CGT assets (except those mentioned above) are taken to have been acquired at that time at their market value.

4. A trust that becomes a 'resident trust for CGT purposes' during an income year does not make any capital gain or capital loss in that income year from any CGT event that happens from the beginning of the income year until the time at which it becomes a resident trust in the income year unless Division 136 (about non-residents) applies.

Trust stops being a resident trust

5. If a trust stops being a 'resident trust for CGT purposes', CGT event I2 in section 104-170 happens. The time of the event is when the trust stops being a 'resident trust for CGT purposes': subsection 104-170(2).

6. A trust stops being a 'resident trust for CGT purposes' at the time during an income year when the requirements of the definition of that expression are no longer satisfied. For a trust that is not a unit trust, for example, it stops being a 'resident trust for CGT purposes' when the trustee stops being an Australian resident and the central management and control of the trust is not in Australia.

7. A trust that stops being a 'resident trust for CGT purposes' during an income year does not make any capital gain or capital loss in that income year from any CGT event that happens from the time at which it stops being a resident trust in the income year until the end of that income year unless Division 136 (about non-residents) applies.

Note

8. This construction does not affect the operation of Division 6 of the *Income Tax Assessment Act 1936* or other general provisions of the income tax law.

Example 1

9. *The trustee of a US discretionary trust becomes a resident of Australia on 1 April 1999. The trust holds US assets. All assets acquired on or after 20 September 1985 are deemed to have been acquired on 1 April 1999 and the market value of each asset at that time becomes the first element of its cost base. The trust can make a capital gain or capital loss from any CGT event that happens in relation to the assets on or after 1 April 1999.*

Example 2

10. *An Australian discretionary trust ceases to be a resident trust for CGT purposes on 31 March 1999. The trust holds Australian and UK assets. The trustee needs to work out if it has made a capital gain or a capital loss for each CGT asset (except those having the necessary connection with Australia) that it owned as trustee just before it stops being a resident trust for CGT purposes. It can disregard any capital gain or capital loss if it acquired the asset before 20 September 1985. The trustee makes a capital gain if the market value of a CGT asset, as at 31 March 1999, is more than the asset's cost base. A capital loss is made if the market value, as at 31 March 1999, is less than the asset's reduced cost base. The trustee makes a capital gain or capital loss involving a CGT asset with the necessary connection with Australia owned as trustee just before it stops being a resident trust for CGT purposes from any CGT event that happens on or after 31 March 1999 if Division 136 (about non-residents) applies.*

Commissioner of Taxation

15 December 1999

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Subject references:

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ITAA 1997 104-170; ITAA 1997 104-170(2); ITAA 1997 136-45; ITAA 1997 995-1

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