



***TD 94/66 - Income tax: if the trustee of a unit trust is 'the owner' of a 'unit of industrial property' (UIP) under Division 10B of Part III of the Income Tax Assessment Act 1936 , is a unit holder in that trust entitled to a deduction under Division 10B in respect of that UIP?***

 This cover sheet is provided for information only. It does not form part of *TD 94/66 - Income tax: if the trustee of a unit trust is 'the owner' of a 'unit of industrial property' (UIP) under Division 10B of Part III of the Income Tax Assessment Act 1936 , is a unit holder in that trust entitled to a deduction under Division 10B in respect of that UIP?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *21 July 1994*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Taxation Determination

**Income tax: if the trustee of a unit trust is 'the owner' of a 'unit of industrial property' (UIP) under Division 10B of Part III of the *Income Tax Assessment Act 1936*, is a unit holder in that trust entitled to a deduction under Division 10B in respect of that UIP?**

1. No. Only the trustee is entitled to a deduction in respect of that UIP.
2. Division 10B allows a deduction to 'the owner' of a UIP (as defined in subsection 124K(1)) who satisfies the conditions set out in section 124L.
3. A UIP is the bundle of rights possessed by a person as the grantee or proprietor of a patent, the owner of a copyright or registered design, or a licensee under such a patent, copyright or design. These rights include any equitable rights in respect of such a patent, copyright or design or in respect of a licence under such a patent, copyright or design. Equivalent rights under a foreign law also fall within the definition of a UIP.
4. The term 'the owner' in relation to a UIP is the person who possesses the rights in respect of that UIP. This definition is relevant, among other things, for the purposes of section 124L.
5. Section 124L allows a deduction under Division 10B to the owner of a UIP who became the owner because he or she was the inventor of the patented invention, the author of the registered design, or the first owner of the copyright to which the UIP relates and incurred capital expenditure, before the UIP came into existence, directly on devising the invention or producing the design or the work in which copyright subsists (paragraph 124L(1)(a)).
6. Division 10B also applies to owners who become the owner of a UIP by incurring capital expenditure to purchase the UIP (paragraph 124L(1)(b)). Division 10B can also apply if the UIP is acquired without payment of valuable consideration or is obtained through transmission by operation of law (paragraph 124L(1)(c) and (d)). In cases where the owner of the UIP became the owner by being granted a patent or obtaining the registration of a design as the assignee of the inventor or author, and incurred capital expenditure in obtaining the assignment, that person is deemed to have incurred that expenditure on the purchase of a UIP.
7. The trustee of a unit trust will be the owner of a UIP if the trustee possesses the rights in respect of the UIP because the trustee is the proprietor or grantee of a patent, the owner of a

copyright or registered design in accordance with the relevant legislation (for example, the *Copyright Act 1968*) or a licensee under such a patent, copyright or design. If the requirements of section 124L are satisfied the trustee will be entitled to deductions under Division 10B.

8. Unit holders in the unit trust may have a beneficial interest in the property of the trust (see *Charles v. FC of T* (1953-54) 90 CLR 598 at 609). Such a beneficial interest, however, does not make unit holders the owner of a UIP in terms of subsection 124K(1). It is the trustee who possesses the rights arising from being the proprietor or grantee of the patent, the owner of a copyright or design or the licensee under such a patent copyright or design (including equitable rights that may arise).

9. The reference to 'equitable rights' in the definition of a UIP in subsection 124K(1) makes it clear that the UIP is comprised of the legal rights possessed by a person as the grantee or proprietor of a patent, owner of a copyright or registered design, or a licensee under such a patent, copyright or design as well as any equitable rights that may arise in relation to that person. We consider that the use of the term 'equitable rights' in the definition of UIP in subsection 124K(1) does not expand the operation of Division 10B to apply to rights possessed by a person other than as the legal owner of a patent, copyright or registered design under the provisions of the relevant legislation or the licensee under such a patent, copyright or registered design.

10. This Determination does **not** apply to investments made in a unit trust where the trustee of the unit trust has been given a Private Binding Ruling under section 14ZAR of the *Taxation Administration Act 1953* that is contrary to this Determination. Taxpayers investing in a unit trust during the term of such a Private Binding Ruling may rely on the advice given to the trustee in that Ruling.

#### *Example 1*

*A unit trust was set up to finance the production of a film. The trustee, in accordance with the provisions of the Copyright Act 1968, is the first owner of the copyright in the film. The trustee incurred costs directly in producing the film in which copyright now subsists. The trustee is the owner of the UIP and will be eligible for deductions under Division 10B. Expenditure by unit holders to acquire units in the unit trust will **not** qualify for a deduction under Division 10B.*

#### *Example 2*

*The trustee of a unit trust is, in accordance with the provisions of the Copyright Act 1968, the owner of copyright in a film. John Smith subscribes in the unit trust and pays \$1,000 for 100 units in the unit trust. John's purchase of the units does not make him the owner of a UIP. John is not entitled to any deduction under Division 10B for the expenditure incurred. The trustee is the owner of the UIP because the trustee possesses the rights as the owner of the copyright in the film.*

### **Commissioner of Taxation**

21/7/94

---

FOI INDEX DETAIL: Reference No. I 1217683

Previously issued as Draft TD 94/D19

Related Determinations:

Related Rulings: IT 131; IT 2658; IT 2671

Subject Ref: capital expenditure; intellectual property; unit of industrial property; unit trust

Legislative Ref: ITAA Pt III Div 10B ; ITAA 124K; ITAA 124L; TAA 14ZAR

Case Ref: *Charles v. FC of T* (1953-54) 90 CLR 598

ATO Ref: NAT 93/3679-6

---

ISSN 1038 - 8982