TD 98/15 - Income tax: capital gains: what are the capital gains consequences for an Australian resident individual shareholder who sells their original allocation of shares in AMP Limited?

Taxation Determination

Income tax: capital gains: what are the capital gains consequences for an Australian resident individual shareholder who sells their original allocation of shares in AMP Limited?

Preamble

The number, subject heading, date of effect and paragraphs 1 - 5 and 7 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and are 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 binding on the Commissioner.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, it 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).

1. A shareholder may make a capital gain on the sale of AMP Limited shares (AMP shares). If the shareholder's capital gains for the year of income exceed their capital losses, the net capital gain is included in their assessable income. Alternatively, a shareholder may make a capital loss on the sale, which is either offset against capital gains in the year of income, or carried forward to be offset against capital gains in future years of income.

2. Generally speaking, shares are sold either privately or through a stockbroker. However, in the demutualisation of AMP Limited, a shareholder is provided with a further means of disposing of their AMP shares. This alternative means is through the Facility, which is a trust operated by AMP Limited to enable a shareholder, who would rather have cash than shares, to sell some or all of their shares at a price determined by AMP Limited.

3. A shareholder who sells some or all of their AMP shares through the Facility, sells the shares at the Facility Price, which is $18.70 per share. The cost base set for each share is $10.43. There are no other costs associated with such a sale. Accordingly, the capital gain per share is $8.27.

4. Although a shareholder does not receive the proceeds from the sale until July 1998, the net capital gain is included in assessable income for the year ended 30 June 1998 because this is the year in which the contract for sale was entered into. We expect, however, that shareholders will receive payment from AMP Limited for the sale of their shares through the Facility before they receive their assessment notices from the Australian Taxation Office.

5. A shareholder who sells some or all of their AMP shares privately or through a stockbroker makes a capital gain or capital loss in the year of income in which the shares are sold. The capital gain or loss is the sale proceeds less the cost base of the shares. The cost base for each share is $10.43 and any incidental costs of disposal, such as brokerage fees and stamp duty. If the AMP shares are sold 12 months or more after they were deemed to have been acquired on 20 November 1997, the cost base is indexed to take account of inflation. The net capital gain should be included in the shareholder's assessable income in the year in which the shares are sold.

Notes

6. **Note 1:** For further information on the capital gain consequences on the sale of shares refer to the Tax Office booklets 'Capital gains tax: what you need to know', 'Capital gains tax: and investments in shares and units' and 'You and Your Shares'.

7. **Note 2:** The set cost base of $10.43 was the embedded value of the shares calculated under section 121AM in Division 9AA of Part III of the *Income Tax Assessment Act 1936*. It only applies to the original allocation of AMP shares to former members of AMP. The cost base of additional AMP shares purchased through the Facility or from other sources, will generally be the price paid for the shares.

8. **Note 3:** As a net capital gain is added to assessable income, a shareholder needs to remember that this increase in assessable income may affect an entitlement to certain taxation concessions and non-tax entitlements which have an income threshold test. This may be relevant in deciding if and when to sell shares.

Example 1

9. *Ken, a former AMP member, was allocated 200 AMP shares which he wanted to sell. He completed and returned the Sell Form that accompanied the prospectus requesting his shares be sold through the Facility. On 8 July 1998 Ken received a cheque for $3,740.00 from AMP Limited. Ken calculated the capital gain on the shares as follows:*

		$
Sale proceeds	*200 x $18.70***	*3,740.00*
Cost base	*200 x $10.43*	*2,086.00*
Capital gain		*1,654.00*

***Facility Price*

10. *Ken has no other capital gains and no capital losses to offset against the capital gain on the sale of the AMP shares. He includes $1,654.00 as a net capital gain in his income tax return for the year ended 30 June 1998.*

Example 2

11. *David, a former AMP member, was allocated 400 AMP shares which he decided to keep. At October 1998, the share price is $20.00 and David sells 200 of his shares through his stockbroker. The brokerage fees and stamp duty costs for the transaction total $150.00. David calculates the capital gain on the shares as follows:*

		$
Sale proceeds	*200 x $20.00*	*4,000.00*
Cost base	*200 x $10.43*	*$2,086.00*
Brokerage fees	*$150.00*	*2,236.00*
Capital gain		*1,764.00*

12. *David also makes a capital loss of $800.00 on the sale of other shares in March 1999. He includes a net capital gain of $964.00 ($1,764.00 - $800.00) in his income tax return for the year ended 30 June 1999.*

Commissioner of Taxation
1 July 1998

FOI INDEX DETAIL: Reference No. I 1015702 Not previously released in draft form
Related Determinations:
Related Rulings:
Subject Ref: capital gains; capital gains tax; capital losses; CGT cost base; cost base; disposal of shares
Legislative Ref: ITAA36 121AM; ITAA36 Pt IIIA; ITAA97 Parts 3-1 and 3-3
Case Ref:
ATO Ref: BRI CG ATD 98/1; NAT 98/6498-9

ISSN 1038 - 8982