

TR 2004/18A1 - Addendum - Income tax: capital gains: application of CGT event K6 (about pre-CGT shares and pre-CGT trust interests) in section 104-230 of the Income Tax Assessment Act 1997

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Addendum

Taxation Ruling

Income tax: capital gains: application of CGT event K6 (about pre-CGT shares and pre-CGT trust interests) in section 104-230 of the *Income Tax Assessment Act 1997*

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2004/18 to:

- reflect the view that only one capital gain may arise in circumstances where paragraphs 104-230(2)(a) and (b) of the *Income Tax Assessment Act 1997* are both satisfied, and
- clarify which property is taken into account in calculating the capital gain under subsection 104-230(6) of that Act.

TR 2004/18 is amended as follows:

1. Preamble

Omit the preamble; substitute:

📌 Relying on this Ruling

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

2. Table of contents

Omit the wording; substitute:

Contents	Para
What this Ruling is about	Error! Bookmark not defined.
Date of effect	9
Ruling	12
Explanation	50
Definitions	196
Detailed contents list	198

3. Paragraphs 1 to 49

Omit the page status 'FOI status: may be released'; substitute 'Status: **legally binding**'.

4. Paragraphs 4, 60, 79 and 162

Omit 'section 160ZZT'; substitute 'former section 160ZZT'.

5. Paragraph 6

Omit the wording of the paragraph; substitute 'All legislative references in this Ruling are to the ITAA 1997, unless otherwise indicated.'

6. Paragraph 7

Omit the wording of the paragraph; substitute 'Key terms in this Ruling are defined in paragraph 196 of this Ruling.'

7. Paragraph 8

Omit the heading; substitute '**Class of person or arrangement**'.

8. Paragraph 9

Omit the wording of the paragraph; substitute:

This Ruling applies to income years commencing both before and after its date of issue. However, the Ruling 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 issue of the Ruling (see paragraphs 75 to 76 of Taxation Ruling TR 2006/10 *Public Rulings*).

9. Paragraph 10

Omit the wording of the paragraph; substitute:

This Ruling incorporates changes that have been made by an addendum. Refer to the addendum for details of how the addendum has amended the Ruling, including the date of effect of the amendments. Both the pre-addendum wording of the Ruling and the revised wording in the addendum apply prior to the issue date of the addendum. In these circumstances, entities can choose to rely on either version.

10. Paragraph 11

Omit the paragraph, including heading.

11. Paragraph 14

- (a) Omit the wording of the heading; substitute '***When is an item of property that is a CGT asset acquired for CGT event K6 purposes?***'.

- (b) Omit 'is acquired at the time'; substitute 'is acquired, for the purposes of CGT event K6, at the time'.

12. Paragraphs 17, 18, 19, 37, 52, 70, 76, 79, 80, 81, 86, 89, 90, 114, 115, 160, 163, 171, 180 and 196

Omit 'lower tier'; substitute 'lower-tier'.

13. Paragraph 21

- (a) After the paragraph, insert new paragraphs 21A and 21B (including heading):

What are the consequences of satisfying the 75% test?

21A. If the 75% test is satisfied (and the other requirements of subsection 104-230(1) are met), CGT event K6 happens. Only one capital gain may arise^{A1} in relation to the CGT event. This is the case even if the 75% test is separately satisfied by both the property referred to in paragraph 104-230(2)(a) and the property referred to in paragraph 104-230(2)(b).

21B. The next step is the separate task of calculating the amount of the capital gain. This involves construing and applying subsection 104-230(6), which refers to 'the property referred to in subsection (2)' without qualification.

- (b) After 'Only one capital gain may arise' in new paragraph 21A, insert new footnote A1:

^{A1} You cannot make a capital loss under CGT event K6.

14. Paragraph 22

- (a) Omit the wording of the second heading; substitute '***What property is taken into account in calculating the capital gain for CGT event K6 purposes?***'.
- (b) Omit the wording of the paragraph; substitute:

The phrase 'the property referred to in subsection (2)' is a reference to all property described in paragraphs 104-230(2)(a) and (b), irrespective of whether a particular item of property is essential to the conclusion that the 75% test is satisfied. The statutory text does not direct one to have regard to only a subset of the property referred to in subsection 104-230(2).

15. Paragraphs 23, 104, 105, 111, 118, 129 and 135

Omit the paragraphs.

16. Paragraph 24

- (a) Omit the wording of the paragraph; substitute:

What constitutes a reasonable attribution of the capital proceeds for the purposes of calculating the capital gain under subsection 104-230(6) will

depend on the facts in each case, and is to be informed by the legislative purpose to which section 104-230 is directed.^{A2} This includes the purpose of bringing to account, as a capital gain, 'that part of the disposal proceeds ... that is attributable to an increase in the value of underlying property acquired on or after 20 September 1985'.^{A3} No formula or other methodology can supplant the statutory requirement which merely provides that the attribution must be reasonable.

- (b) After the first sentence, insert new footnote A2:

^{A2} *Commissioner of Taxation (Cth) v Sun Alliance Investments Pty Ltd (In liquidation)* [2005] HCA 70 at [77].

- (c) After the second sentence, insert new footnote A3:

^{A3} Explanatory Memorandum to the Income Tax Assessment Amendment (Capital Gains) Bill 1986.

17. Paragraph 25

Omit the wording of the paragraph; substitute:

In most cases involving a single-tier structure, we consider that a reasonable attribution of the capital proceeds is achieved by applying the two-step approach outlined in paragraphs 27 to 33 of this Ruling, though it is recognised this approach may not give the only reasonable attribution.

18. Paragraph 26

Omit the wording of the paragraph; substitute:

In the case of a single-tier structure, we will generally accept a CGT event K6 capital gain calculated under the two-step approach as reasonable. However, what constitutes a reasonable attribution in any given case remains dependent on the facts of the case. In some cases, the two-step approach may result in an attribution that is not reasonable and therefore it would not be accepted. Such an outcome would arise where, for instance, the entity acquires a substantial asset fully funded by liabilities just prior to CGT event K6 being triggered with the intention of accessing a significantly reduced CGT event K6 capital gain under this approach.

19. Paragraph 28

Omit 'The Tax Office'; substitute 'We'.

20. Paragraph 29

Omit the wording of the paragraph, substitute:

As a result, the capital proceeds relating to the post-CGT property could be determined as:

$$\text{Step 1 amount} = \text{capital proceeds} \times \frac{\text{market value of post-CGT property}}{\text{market value of all property}}$$

Where:

- *market value of post-CGT property* is the sum of the market value of the post-CGT property taken into account under paragraph 104-230(2)(a); and
- *market value of all property* is the sum of the market value of all property (including pre-CGT acquired property and trading stock) owned by the company.

21. Paragraphs 31 and 126

Omit 'The Tax Office considers'; substitute 'We consider'.

22. Paragraph 32

Omit the wording of the paragraph, substitute:

As a result, the amount of the CGT event K6 capital gain is determined under step 2 as:

$$\text{Step 1 amount} \times \text{market value excess} \div \text{market value of post-CGT property}$$

Where *market value excess* is the excess of the market value of property taken into account under subsection 104-230(6) over the sum of the cost bases of that property.

23. Paragraph 34

- (a) Omit 'single tier'; substitute 'single-tier'.
- (b) Omit the following:

In a limited number of cases involving simple multi-tier structures, an unmodified application of that approach may result in a reasonable attribution. However, in the majority of cases involving multi-tier structures, complicating factors would require adjustments to be made.

24. Paragraph 35

- (a) Omit the wording of the paragraph; substitute:

In multi-tier structures, the process of reasonable attribution is complicated by having both the *interests in* lower-tier entities and the *property of* lower-tier entities (the *underlying property*) in the pool of property taken into account in calculating the capital gain. It is important to approach this process in a way that avoids attributing capital proceeds to both the interests and the underlying property. What constitutes a reasonable attribution in a multi-tier structure will depend on the facts in each case.

- (b) After the paragraph, insert new paragraphs 35A and 35B:

35A. In most situations, it would be reasonable to attribute the capital proceeds to the value of the underlying property rather than to the value of interests in the lower-tier entity. This approach ensures that, consistent with

the purpose of section 104-230, the pre-CGT and post-CGT status of the underlying property is properly reflected in the calculation of the capital gain.

35B. However, there will be limited situations where it is reasonable to attribute the capital proceeds on the basis of interests in the lower-tier entity rather than the underlying property. For example, if a lower-tier company holds post-CGT property that has increased in value but the shares in the lower-tier company itself have no (or much lower) value for other reasons, it might not be reasonable to look through the lower-tier company to attribute any part of the capital proceeds to the increased value of the underlying post-CGT property.^{A4} This is because the increased value of that underlying property may have had no impact on the capital proceeds due to the counteracting effect of the other factors that have caused the lower-tier company to have no value.

- (c) After the second sentence in new paragraph 35B, insert new footnote A4:

^{A4} This is, of course, subject to the reason for the lower value – for example, if the lower-tier company has taken on significant debt shortly before CGT event K6 happens, it might still be reasonable to look to the underlying property in doing the attribution.

25. Paragraph 37

Omit 'will however'; substitute 'will, however,'.

26. Paragraphs 39 and 40

Omit the paragraphs, including heading.

27. Paragraph 41

Omit 'They'; substitute 'Depreciating assets'.

28. Paragraph 44

Omit 'Yes. Provided'; substitute 'Yes, provided'.

29. Paragraphs 50 to 198

Omit the page status 'FOI status: may be released'; substitute 'Status: **not legally binding**'.

30. Paragraph 50

After the heading, insert:

ⓘ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

31. Paragraph 51

- (a) Omit the wording of the paragraph; substitute:
- The term 'property' is not defined for the purposes of CGT event K6, although trading stock is specifically excluded. Property in section 104-230 has its ordinary legal meaning (see *ICI Australia Ltd v Commissioner of Taxation of the Commonwealth of Australia*;¹ *Hepples, P.W. v Commissioner of Taxation*;² *R v Toohey; Ex parte Meneling Station Pty Ltd*;³ *Naval, Military & Airforce Club of South Australia (Incorporated) v The Commissioner of Taxation*).⁴
- (b) Omit the wording of footnote 1; substitute '[1996] FCA 617; 68 FCR 122 at [137–138]; 33 ATR 174 at [188–189]; 96 ATC 4680 at [4693–94], per Lockhart J.'.
- (c) Omit the wording of footnote 2; substitute '[1990] FCA 296; 22 FCR 1 at [20–27]; 21 ATR 42 at [60–66]; 90 ATC 4497 at [4512–17], per Gummow J.'.
- (d) Omit the wording of footnote 3; substitute '[1982] HCA 69; 158 CLR 327 at [341–343], per Mason J.'.
- (e) Omit the wording of footnote 4; substitute '[1994] FCA 319.'.

32. Paragraph 54

- (a) After 'On the other hand', insert a comma
- (b) Omit 'non assignable'; substitute 'non-assignable'
- (c) Omit '*Hepples v.*'; substitute '*Hepples, P.W. v.*'
- (d) Omit the wording of footnote 6; substitute '[1990] FCA 296.'.

33. Paragraph 57

- (a) Omit 'The Tax Office does'; substitute 'We do'.
- (b) Omit 'well understood; substitute 'well-understood'.

34. Paragraph 58

Omit 'Also, while there is debate whether Australian currency notes and coins ('cash') is a CGT asset, it is clearly a chattel and therefore 'property'; substitute 'Australian currency notes and coins ('cash') are a chattel and therefore 'property'.

35. Paragraph 60

- (a) Omit 'The Tax Office does'; substitute 'We do'.
- (b) In footnote 8, after 'introduced by', insert 'the'.

36. Paragraph 63

Omit the wording of the paragraph; substitute:

Patricia holds 100% of the pre-CGT shares in Y Co, which owns a block of land it acquired prior to 20 September 1985. Y Co constructed a building on the land in 1995. The land and building are separate CGT assets under Subdivision 108-D. However, the land and building are a single item of property acquired prior to 20 September 1985 for CGT event K6 purposes.

37. Paragraph 64

Omit the wording of the heading; substitute '**When is an item of property that is a CGT asset acquired for CGT event K6 purposes?**'.

38. Paragraph 70

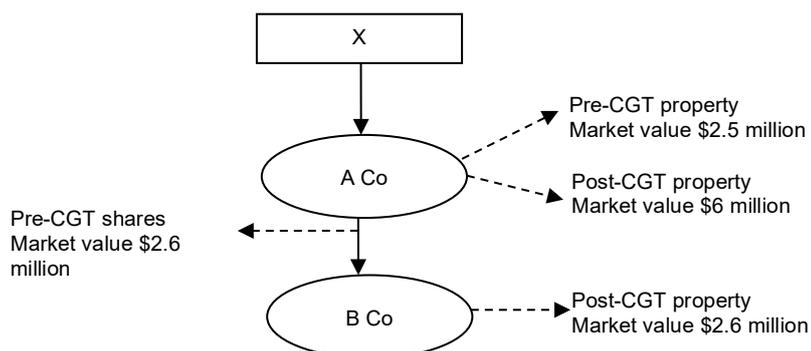
- (a) Omit 'The Tax Office observes'; substitute 'We observe'.
- (b) Omit 'Part IVA'; substitute 'Part IVA of the ITAA 1936'.

39. Paragraph 71

Omit the wording of the paragraph (including diagram); substitute:

X acquired all of the shares of A Co (a private company manufacturer) before 20 September 1985. X sold those shares on 1 July 2001. Just before the time of disposal, A Co owned pre-CGT property and post-CGT property, including pre-CGT issued shares in B Co, another private company. The only property of B Co is post-CGT property. The market value of the property of both A Co and B Co at the date of sale is shown in Diagram 1 of this Ruling.

Diagram 1: Ownership of shares and property outlined in Example 2 of this Ruling

**40. Paragraph 72**

Omit the wording of the paragraph; substitute:

The property referred to in paragraph 104-230(2)(a) does not satisfy the 75% test because the market value of post-CGT property in A Co does not equal or exceed 75% of the net value of A Co (\$6 million ÷ \$11.1 million = 54.05%). The property referred to in paragraph 104-230(2)(b) also does not satisfy the 75% test because the market value of the interest which A Co owns in post-CGT property through B

Co does not equal or exceed 75% of the net value of A Co (\$2.6 million ÷ \$11.1 million = 23.42%).

41. Paragraph 74

Omit the wording of the paragraph; substitute:

Had the post-CGT property held by B Co instead been held by A Co, the post-CGT property held by A Co would have satisfied the 75% test.

42. Paragraph 75

(a) Omit the wording of the paragraph; substitute:

An alternative view is that the word 'or' should be construed conjunctively – that is, to mean 'and'. This is either because the draftsman made an error that would give a wholly unreasonable result as could not have been intended by the legislature (see *R v. Oakes*⁹ cited with approval *Ex parte Melvin*)¹⁰ or, in its context, the word 'or' should be given a conjunctive interpretation (see *Gillespie v. Ford*;¹¹ *Minister for Immigration & Ethnic Affairs v. Baker, Wendy Susan*;¹² *Unity APA Ltd v. Humes Ltd (No. 2)*;¹³ *Ormerod v. Blaslov*;¹⁴ *The Electricity Trust of South Australia v Krone (Australia) Technique Pty Ltd & Ors*).¹⁵

(b) In footnote 9, omit '356-357'; substitute '[356–357]'.

(c) In footnote 10, omit '393-394'; substitute '[393–394]'.

(d) In footnote 11, omit '108'; substitute '[108]'.

(e) In footnote 12, omit the wording; substitute '[1997] FCA 105, per Burchett, Branson and Tamberlin JJ.'.

(f) In footnote 13, omit '481-482'; substitute '[481–482]'.

(g) In footnote 14, omit '269 *et seq*'; substitute '[269]'.

(h) In footnote 15, omit the wording; substitute '[1994] FCA 461; 51 FCR 540 at [547].'

43. Paragraphs 76, 79, 115 and 162

Omit 'The Tax Office does'; substitute 'We do'.

44. Paragraphs 78, 79, 128, 138 and 196

Omit 'single tier'; substitute 'single-tier'.

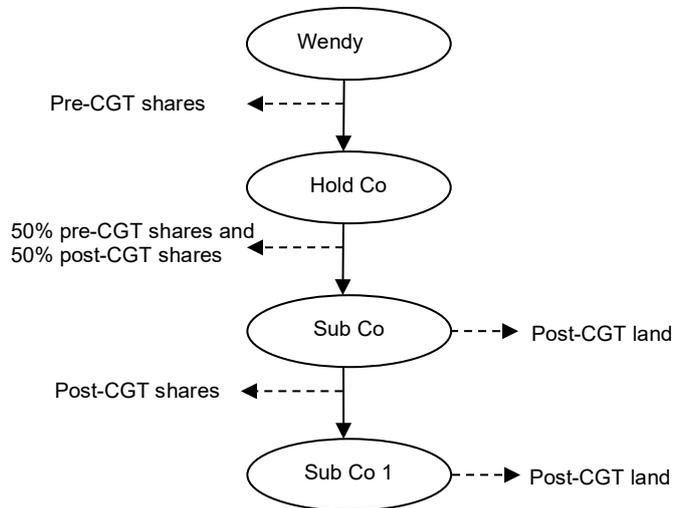
45. Paragraph 81

Omit 'The Tax Office considers'; substitute 'We consider'.

46. Paragraph 82

Omit the diagram; substitute:

Diagram 2: Ownership of shares and property outlined in Example 3 of this Ruling

**47. Paragraph 84**

After the paragraph, insert a full stop.

48. Paragraph 85

Omit the wording of the paragraph; substitute:

If Hold Co instead owned 70% of the shares in Sub Co, with five-sevenths of those shares being post-CGT shares and the remaining two-sevenths being pre-CGT shares, the property taken into account under paragraph 104-230(2)(b) would be the proportionate interest that Hold Co has in the underlying property owned by Sub Co and Sub Co 1 – that is, 70% of the market value of both the post-CGT land in Sub Co and the post-CGT land in Sub Co 1 would be taken into account under paragraph 104-230(2)(b). The fact that two-sevenths of the shares owned by Hold Co were pre-CGT shares is irrelevant.

49. Paragraphs 87, 88 and 89

Omit all instances of 'example 3'; substitute 'Example 3 of this Ruling'.

50. Paragraph 90

- (a) Omit 'the view of the Tax Office'; substitute 'our view'.
- (b) Omit ', directly fulfils'; substitute 'directly fulfils'.

- (c) Omit the wording of footnote 16; substitute:

The Explanatory Memorandum to the Income Tax Assessment Amendment (Capital Gains) Bill 1986, which introduced section 160ZZT (the predecessor of section 104-230), states that (emphasis added):

Section 160ZZT is the operative provision which will bring to account as a capital gain that part of the disposal proceeds of shares in a company ... acquired before 20 September 1985 that is *attributable to an increase in the value of underlying property acquired on or after 20 September 1985*.

51. Paragraph 92

Omit all instances of 'say'; substitute 'for example'.

52. Paragraph 95

After 'financial statements', insert a comma.

53. Paragraph 96

After 'Taxation Ruling TR 2002/20', insert '*Income tax: Thin Capitalisation – Definitions of assets and liabilities for the purposes of Division 820*'.

54. Paragraph 101

- (a) After the paragraph, insert new paragraph 101A (including heading):

What are the consequences of satisfying the 75% test?

101A. Once the 75% test is satisfied (and the other requirements of subsection 104-230(1) are met), CGT event K6 happens. Only one capital gain may arise¹⁷, even if the 75% test is separately satisfied by both the property referred to in paragraph 104-230(2)(a) and the property referred to in paragraph 104-230(2)(b). This conclusion is consistent with both the wording used in subsection 104-230(6) (which provides that an entity 'makes a capital gain') and the general scheme of the CGT provisions.

- (b) After 'Only one capital gain may arise' in new paragraph 101A, insert new footnote 17:

¹⁷ You cannot make a capital loss under CGT event K6.

55. Paragraph 102

- (a) Omit the wording of the second heading; substitute '***What property is taken into account in calculating the capital gain for CGT event K6 purposes?***'.
- (b) Omit the wording of the paragraph; substitute:

The property taken into account under subsection 104-230(6) is the property referred to in paragraph 104-230(2)(a) and the property referred to in paragraph 104-230(2)(b). This is irrespective of whether the 75% test is

satisfied by the property referred to in only one of those paragraphs or separately satisfied by the property referred to in both of those paragraphs.

56. Paragraph 103

Omit the wording of the paragraph; substitute:

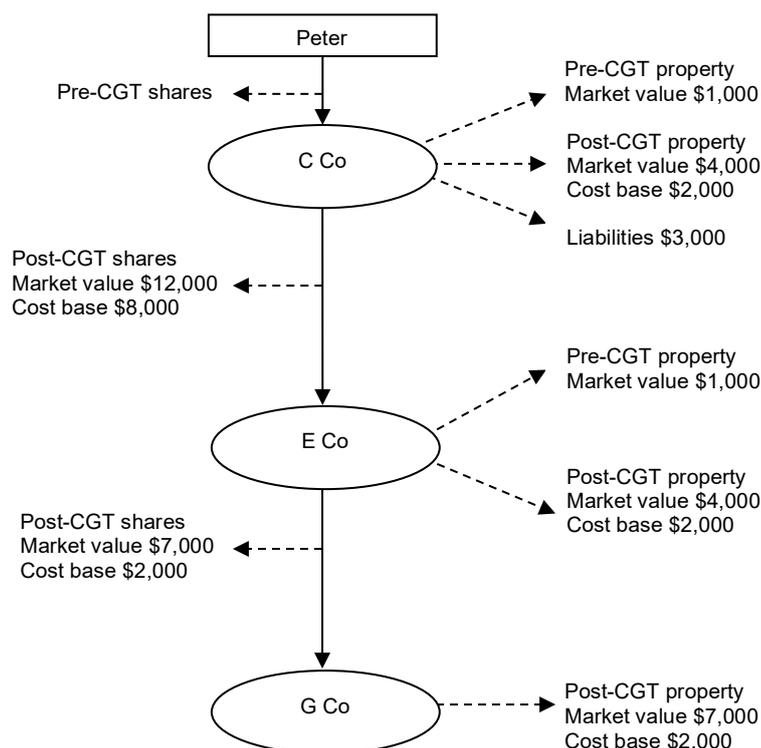
The 75% test is a threshold test which determines whether the provision has application. As a result, the property taken into account under subsection 104-230(6) is not governed by what property satisfied the 75% test.

57. Paragraph 106

Omit the wording of the paragraph (including diagram); substitute:

Peter owns all of the shares, being pre-CGT shares, in C Co, which owns pre-CGT and post-CGT property, including post-CGT shares in the lower-tier company E Co. E Co owns pre-CGT and post-CGT property, including post-CGT shares in the lower-tier company G Co, which owns only post-CGT property.

Diagram 3: Ownership of shares and property outlined in Example 4 of this Ruling



58. Paragraph 107

Omit the wording of the paragraph; substitute:

If Peter were to sell his pre-CGT shares in C Co, both the property referred to in paragraph 104-230(2)(a) [$(\$4,000 + \$12,000) \div \$14,000 = 114.29\%$] and the

property referred to in paragraph 104-230(2)(b) [(\$4,000 + \$7,000) ÷ \$14,000 = 78.57%] would each separately satisfy the 75% test. The post-CGT property in paragraph 104-230(2)(b) consists only of the underlying property in E Co and G Co. The post-CGT shares which E Co owns in G Co are not treated as property for the purposes of paragraph 104-230(2)(b).

59. Paragraph 108

Omit the wording of the paragraph; substitute:

As the 75% test (and other preconditions under subsection 104-230(1)) are satisfied, CGT event K6 happens. In calculating the capital gain under subsection 104-230(6), Peter must take into account all of the property referred to in subsection 104-230(2). See paragraphs 116 to 130D of this Ruling for an explanation concerning the calculation of the capital gain under subsection 104-230(6).

60. Paragraph 109

Omit the wording of the paragraph; substitute:

Assume now that the underlying post-CGT property in G Co consists mostly of trading stock which is specifically excluded from property in paragraph 104-230(2)(b). The property referred to in paragraph 104-230(2)(a) still satisfies the 75% test but assume that the property referred to in paragraph 104-230(2)(b) now does not. Peter still takes into account all the property referred to in subsection 104-230(2) (including the property referred to in paragraph 104-230(2)(b)) in calculating his capital gain under subsection 104-230(6).

61. Paragraph 110

(a) Omit the wording of the paragraph (including heading); substitute:

Alternative view: property that satisfied the 75% test

An alternative view is that if the property referred to in either paragraph 104-230(2)(a) or 104-230(2)(b) (but not both) satisfies the 75% test, the property taken into account is that referred to in the paragraph for which the 75% test is satisfied.

(b) After the paragraph, insert new paragraph 110A:

110A. If the property referred to in each of paragraphs 104-230(2)(a) and 104-230(2)(b) separately satisfies the 75% test, the property in each paragraph is separately taken into account under subsection 104-230(6), with the result that two capital gains may arise under that subsection. In these circumstances, proponents of this view argue that the lesser capital gain be disregarded to avoid a double application of the provision.

62. Paragraph 112

Omit the wording of the paragraph; substitute:

We consider that:

- The context of section 104-230 does not indicate a link between the property which satisfies the 75% test in subsection 104-230(2) and the property which is taken into account in calculating the capital gain for subsection 104-230(6) purposes. The wider purpose of section 104-230 supports the proposition that regard should be had to all 'property referred to in subsection 104-230(2)' (that is, all post-CGT property whether held directly or through interposed companies or trusts).
- The function of the word 'or' in paragraph 104-230(2)(a) is to make it sufficient that either the property referred to in paragraph 104-230(2)(a) or the interests referred to in paragraph 104-230(2)(b) have an aggregate market value of at least 75% of the net value of the relevant company or trust. Subsection 104-230(6) simply refers to what is 'the property referred to in subsection (2)'. Subsection 104-230(6)'s wording does not direct attention to whether the property referred to has caused the 75% test to be satisfied.

63. Paragraph 115

Omit 'low value property'; substitute 'low-value property'.

64. Paragraph 117

(a) Omit the wording of the paragraph; substitute:

The legislation provides the reasonableness requirement as the way that an amount of capital proceeds is to be attributed to the market value excess on the post-CGT property. Reasonable attribution is to be informed by the legislative purpose to which section 104-230 is directed.¹⁸ This includes the purpose of bringing to account, as a capital gain, 'that part of the disposal proceeds ... that is attributable to an increase in the value of underlying property acquired on or after 20 September 1985'.¹⁹

(b) After the second sentence, insert new footnote 18:

¹⁸ *Commissioner of Taxation v Sun Alliance Investments Pty Limited (in liquidation)* [2005] HCA 70 at [77].

(c) At the end of the paragraph, insert new footnote 19:

¹⁹ Explanatory Memorandum to the Income Tax Assessment Amendment (Capital Gains) Bill 1986.

65. Paragraph 119

Omit 'therefore'.

66. Paragraph 120

- (a) In the heading, omit '*single tier*'; substitute '*single-tier*'.
- (b) Omit the wording of the paragraph; substitute:

We consider that the principles underpinning the two-step approach outlined in paragraphs 27 to 33 of this Ruling are legislatively supported by the wording of subsection 104-230(6). As a result, in the case of a single-tier structure, we will normally accept as reasonable the CGT event K6 capital gain calculated under this approach.

67. Paragraph 121

Omit the wording of the paragraph; substitute:

This does not override the principle that what constitutes a reasonable attribution in any given case will depend on the facts of that case. In some cases, the two-step approach may not lead to a reasonable attribution.

68. Paragraph 122

- (a) Omit the first instance of 'would'; substitute 'may'.
- (b) Omit 'manifestly and materially'.
- (c) Omit 'debt funded asset'; substitute 'debt-funded asset'.

69. Paragraph 123

Omit 'the Tax Office'; substitute 'we'.

70. Paragraph 128

Omit the following:

However, in the majority of cases involving multi-tier structures, complicating factors will mean an unmodified application of that approach will not result in a reasonable attribution of the capital proceeds.

71. Paragraph 130

- (a) Omit the paragraph.
- (b) After the omitted paragraph, insert new paragraphs 130A to 130D:

130A. In multi-tier structures, the process of reasonable attribution is complicated by having both the interests in lower-tier entities and the property of lower-tier entities (the underlying property) in the pool of property taken into account in calculating the capital gain. It is important to approach this process in a way that avoids attributing capital proceeds to both the interests and the underlying property.

130B. What constitutes a reasonable attribution in a multi-tier structure will depend on the facts in each case and is to be informed by the legislative purpose to which section 104-230 was directed. We consider (having regard to the reference to 'underlying property' in the Explanatory Memorandum²⁰

and in former section 160ZZT of the ITAA 1936, and the requirement in section 104-230 to look through ‘interposed’ companies or trusts) that the legislature intended to focus attention on the property from which any interests in lower-tier entities derived their value rather than the interests themselves.

130C. Consistent with this intention, it would generally be reasonable to attribute the capital proceeds to the value of the underlying property, rather than to the value of interests in the lower-tier entity. This approach ensures that consistent with the purpose of section 104-230, the pre and post-CGT status of the underlying property is properly reflected in the calculation of the capital gain.

130D. However, there will be limited situations where it is reasonable to attribute the capital proceeds on the basis of interests in the lower-tier entity, rather than the underlying property. For example, if a lower-tier company holds post-CGT property that has increased in value but the shares in the lower-tier company itself have no (or much lower) value for other reasons, it might not be reasonable to look through the lower-tier company to attribute any part of the capital proceeds to the increased value of the underlying post-CGT property.²¹ This is because the increased value of the property may have had no impact on the capital proceeds due to the counteracting effect of the other factors that have caused the lower-tier company to have no value.

- (c) In new paragraph 130B, insert new footnote 20:

²⁰ Explanatory Memorandum to the Income Tax Assessment Amendment (Capital Gains) Bill 1986. See, in particular, the extract at paragraph 24 of this Ruling referencing ‘underlying property’.

- (d) In new paragraph 130D, after the second sentence, insert new footnote 21:

²¹ This is, of course, subject to the reason for the lower value – for example, if the lower-tier company has taken on significant debt shortly before CGT event K6 happens, it might still be reasonable to look to the underlying property in doing the attribution.

72. Paragraph 131

- (a) Omit ‘*privately owned*’; substitute ‘*privately-owned*’.
- (b) After ‘*following property*’, insert a comma.
- (c) Omit the table; substitute:

Table 1: Market value and cost base for Property of Min Co

Property	Market value	Cost base
<i>Debtors</i>	\$20,000	\$20,000
<i>Loans</i>	\$45,000	\$45,000
<i>Cash at bank</i>	\$15,000	\$15,000
<i>Mining tenement – QLD (pre-CGT)</i>	\$240,000	\$220,000
<i>Mining tenement – SA</i>	\$260,000	\$125,000
<i>Depreciating assets</i>	\$40,000	\$50,000

Property	Market value	Cost base
<i>Land and buildings</i>	\$230,000	\$260,000
<i>Totals</i>	\$850,000	\$735,000

73. Paragraphs 132 and 138

- (a) Omit 'single tier'; substitute 'single-tier'.
 (b) Omit '2 step'; substitute 'two-step'.

74. Paragraph 133

Omit the formula; substitute:

$$\begin{aligned}
 \text{Step 1 amount} &= \text{capital proceeds} \times \text{market value of post-CGT property} \div \text{market} \\
 &\quad \text{value of all property} \\
 &= \$810,000 \times \$610,000 \div \$850,000 \\
 &= \$581,294.
 \end{aligned}$$

75. Paragraph 134

Omit the formula; substitute:

$$\begin{aligned}
 &\text{Step 1 amount} \times \text{market value excess} \div \text{market value of post-CGT property} \\
 &= \$581,294 \times \$95,000 \div \$610,000 \\
 &= \$90,529.
 \end{aligned}$$

76. Paragraph 137

Omit '*privately owned*'; substitute '*privately-owned*'.

77. Paragraph 139

Omit the formula; substitute:

$$\begin{aligned}
 \text{Step 1 amount} &= \text{gross proceeds relating to post-CGT property} - \text{liabilities} \\
 &= (\$800,000 \div \$1,000,000 \times \$1,070,000) - \$50,000 \\
 &= \$806,000.
 \end{aligned}$$

78. Paragraph 140

Omit the formula; substitute:

$$\begin{aligned}
 &\text{Step 1 amount} \times \text{market value excess} \div \text{market value of post-CGT property} \\
 &= \$806,000 \times \$400,000 \div \$800,000 \\
 &= \$403,000.
 \end{aligned}$$

79. Paragraph 141

Omit 'The Tax Office will accept as reasonable the capital gain of \$400,000 because, having regard to the facts, it is not thought to be manifestly and materially unreasonable.'

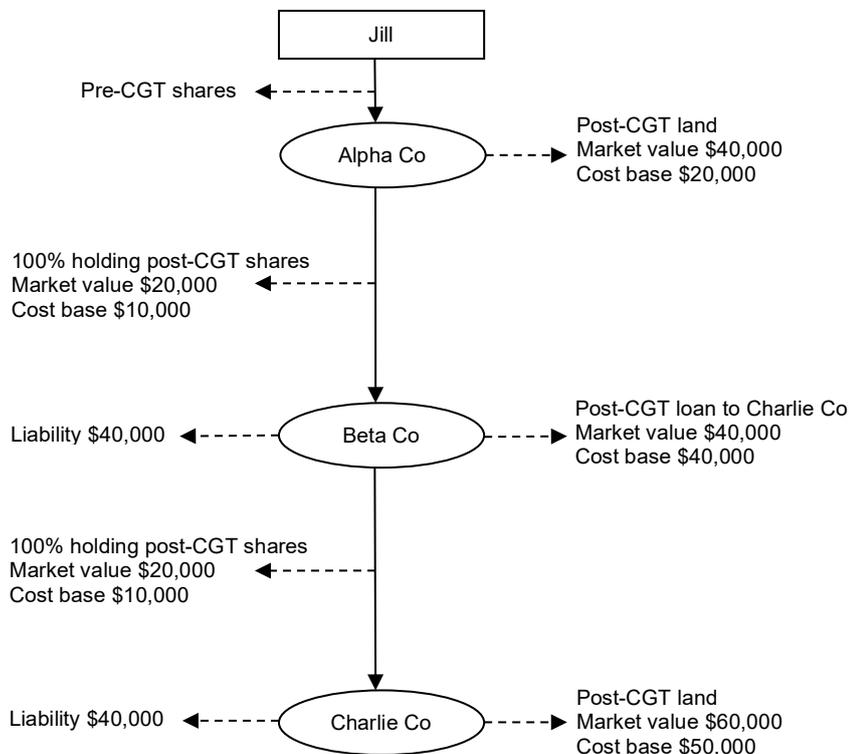
80. Paragraph 142

Omit 'Jill sells all of her shares for \$60,000 under an arms length dealing with a third party purchaser'; substitute 'Jill sells all her shares for \$60,000 under an arm's length dealing with a third-party purchaser'.

81. Paragraph 144

Omit the diagram; substitute:

Diagram 4: Ownership of shares and property outlined in Example 7 of this Ruling

**82. Paragraph 145**

Omit the wording of the paragraph; substitute:

The property referred to in paragraph 104-230(2)(a) $[(\$40,000 + \$20,000) \div \$60,000 = 100\%]$ and the property referred to in paragraph 104-230(2)(b) $[(\$40,000 + \$60,000) \div \$60,000 = 166.67\%]$ each separately satisfies the 75% test. Accordingly, CGT event K6 happens.

83. Paragraph 146

Omit the wording of the paragraph; substitute:

In calculating the capital gain, Jill may undertake an attribution in any way that is reasonable. In this relatively simple multi-tier scenario, Jill may use a modified version of the two-step approach (but the application of this method will not always result in a reasonable attribution in multi-tier scenarios).

84. Paragraph 147

(a) Omit the paragraph, including heading.

(b) After the omitted paragraph, insert new paragraph 147A:

147A. Whichever method she uses, Jill should retain records which document the process she undertakes, including any assumptions she makes.

85. Paragraph 148

(a) Omit the wording of the paragraph; substitute:

Jill assumes that the post-CGT property is reflected in the capital proceeds on a proportional market value basis.

(b) After the paragraph, insert new paragraphs 148A to 148D:

148A. Accordingly, the capital proceeds of \$60,000 relates to:

- *the post-CGT land owned by Alpha Co (\$40,000)*
- *the post-CGT shares Alpha Co owns in Beta Co (\$20,000).*

148B. However, the \$20,000 component of the capital proceeds that relates to the shares in Beta Co also relates to any underlying property owned (directly or indirectly) by Beta Co. In this case, there is only one such item, being the land held by Beta Co's subsidiary Charlie Co.

148C. In a multi-tier structure, it is generally appropriate to attribute the capital proceeds to the underlying property and not to shares in lower-tier entities. There is nothing in the facts that would suggest that a departure from this general approach is warranted in this case.

148D. Accordingly, the \$60,000 capital proceeds are reasonably attributable to the following items of property:

- *post-CGT land owned by Alpha Co (\$40,000)*
- *post-CGT land owned by Charlie Co (\$20,000).*

86. Paragraph 149

(a) Omit the wording of the paragraph, except for the first sentence.

(b) After the paragraph, insert new paragraphs 149A to 149D:

149A. Of the \$40,000 in capital proceeds that is attributable to the land owned by Alpha Co:

- *\$20,000 is attributable to the market value excess,*

- *the remaining \$20,000 is attributable to the cost base component.*

149B. *Of the \$20,000 in capital proceeds that is attributable to the land owned by Charlie Co:*

- *\$3,333 is attributable to the market value excess [$\$20,000 \times (\$60,000 - \$50,000) \div \$60,000$],*
- *the remaining \$16,667 is attributable to the cost base component [$\$20,000 \times \$50,000 \div \$60,000$].*

149C. *It follows that the amount of the capital proceeds that are reasonably attributable to the market value excess of the post-CGT property is \$23,333 ($\$20,000 + \$3,333$).*

149D. *This is the amount of the capital gain.*

87. Paragraphs 150 to 155

Omit the paragraphs, including any headings.

88. Paragraph 156

- (a) In list point (a), after 'subsection 104-230(6)', insert a comma.
- (b) Omit the wording of list points (b) and (c); substitute:
 - (b) The reasonable attribution can either apply to the post-CGT property as a whole or to each item of post-CGT property separately.
 - (c) In calculating the amount of any capital gain, the reasonable attribution may take into account *all* items of property irrespective of whether the market value of each separate item of property is greater or less than the cost base of that item or may take into account only those items of property that have increased in value.
- (c) In list point (d), omit '*Spencer v. The Commonwealth* (1907) 5 CLR 418 at 441'; substitute '*Spencer v Commonwealth of Australia* [1907] HCA 82; 5 CLR 418 at [441]'
- (d) In list point (d); omit 'at 169'; substitute 'at [169]'
- (e) In list point (e), after 'dispute arises', insert a comma.

89. Paragraphs 157 to 159

Omit the paragraphs, including heading.

90. Paragraph 164

Omit 'the Tax Office does'; substitute 'we do'.

91. Paragraph 165

Omit 'Division 116 contains the general rules about capital proceeds'; substitute 'That Division contains the general rules about capital proceeds,'.

92. Paragraphs 166 and 167

Omit the paragraphs, including heading.

93. Paragraphs 175 and 189

Omit '12 month'; substitute '12-month'.

94. Paragraphs 177 and 178

Omit the paragraphs, including heading.

95. Paragraph 186

After 'Under that framework', insert a comma.

96. Paragraph 190

Omit 'applies to'; substitute 'apply to'.

97. Paragraph 196

In the definition for multi-tier structure, omit the words 'lower tier companies', substitute with 'lower-tier companies'.

98. Paragraph 197

Omit the wording of the paragraph (including table); substitute:

Table 2 of this Ruling provides cross references between the relevant provision of the ITAA 1997 and the corresponding former provision in the ITAA 1936.

Table 2: Corresponding provisions in the ITAA 1997 and ITAA 1936

ITAA 1997	ITAA 1936
section 104-230	section 160ZZT
subsection 104-230(2)	paragraphs 160ZZT(1)(c) and (d)
subsection 104-230(6)	subsection 160ZZT(1)
paragraph 104-230(9)(a)	paragraphs 160ZZT(1A)(a) and (c)
Division 149	Division 20 of Part IIIA

99. Paragraph 198

Omit the paragraph; substitute:

198. Below is a detailed contents list for this Taxation Ruling:

	Paragraph
What this Ruling is about	1
Class of person or arrangement	8
Date of effect	9
Ruling	12
Property	12
<i>What is meant by the term 'property' for CGT event K6 purposes?</i>	12
<i>If a single item of property is treated as two or more CGT assets under Subdivision 108-D, how is the item treated for CGT event K6 purposes?</i>	13
<i>When is an item of property that is a CGT asset acquired for CGT event K6 purposes?</i>	14
75% test	16
<i>How is the test satisfied?</i>	16
<i>What property is taken into account under paragraph 104-230(2)(b)?</i>	18
<i>What assets and liabilities are taken into account for the purposes of working out the net value of a company?</i>	20
<i>What are the consequences of satisfying the 75% test?</i>	21A
Calculation of the capital gain for CGT event K6	22
<i>What property is taken into account in calculating the capital gain for CGT event K6 purposes?</i>	22
<i>How is the capital gain calculated for CGT event K6?</i>	24
Step 1 – determine how much of the capital proceeds actually relates to the post-CGT property	27
Step 2 – determine how much of the step 1 amount relates to the amount by which the market value of the post-CGT property exceeds the costs bases of that property	31
<i>What company must satisfy the stock exchange listing requirements in paragraph 104-230(9)(a) for CGT event K6 not to happen?</i>	36
<i>Can section 116-30 substitute market value proceeds?</i>	38
<i>Do depreciating assets have cost bases for the purpose of calculating the capital gain?</i>	41
<i>Can subsection 110-45(2) apply to reduce the cost bases of depreciating assets for amounts deducted for their decline in value?</i>	42
<i>Is the CGT discount in Division 115 potentially available for a capital gain made under CGT event K6?</i>	43

<i>Can small business CGT relief in Division 152 apply to a CGT event K6 capital gain?</i>	44
Interactions with other provisions	45
<i>Can a choice be made to avoid the disregarding of a capital gain under subsection 104-230(10) in circumstances where a choice for scrip for scrip rollover would have been available had the shares been acquired post-CGT?</i>	45
<i>If a capital gain is disregarded under subsection 104-230(10), what is the amount of the reduction required to the cost base and reduced cost base of the replacement share under subsection 124-800(2)?</i>	46
<i>If the cost base and reduced cost base of a post-CGT replacement share is reduced under subsection 124-800(2) as a result of a capital gain being disregarded under subsection 104-230(10), is the CGT discount available if a CGT event happens to the share within 12 months of its acquisition?</i>	47
<i>Can CGT event K6 happen when pre-CGT shares end under CGT event C2 on deregistration of a company in liquidation following its winding up?</i>	48
Explanation	50
Property	51
<i>What is meant by the term 'property' for CGT event K6 purposes?</i>	51
Alternative view: property should be construed as meaning the same as 'assets'	55
Alternative view: property means 'CGT assets'	58
<i>If a single item of property is treated as two or more CGT assets under Subdivision 108-D, how is the item treated for CGT event K6 purposes?</i>	61
<u>Example 1</u>	63
<i>When is an item of property that is a CGT asset acquired for CGT event K6 purposes?</i>	64
75% test	68
<i>How is the test satisfied?</i>	68
<u>Example 2</u>	71
Alternative view: 'or' should be construed conjunctively	75
Alternative view: single test for multi-tier structures	77
<i>What property is taken into account under paragraph 104-230(2)(b)?</i>	80
<u>Example 3</u>	82
Alternative views	86
<i>What assets and liabilities are taken into account for the purposes of working out the net value of a company?</i>	91
Assets	93
Alternative view: accounting meaning of 'assets'	95
Liabilities	97
Alternative view: accounting meaning of 'liabilities'	100

<i>What are the consequences of satisfying the 75% test?</i>	101A
Calculation of the capital gain for CGT event K6	102
<i>What property is taken into account in calculating the capital gain for CGT event K6 purposes?</i>	102
<u>Example 4</u>	106
Alternative view: property that satisfied the 75% test	110
Alternative view: more specific test for multi-tier structures	113
<i>How is the capital gain calculated for CGT event K6?</i>	116
Reasonable attribution – single-tier structures	120
Step 1	123
Step 2	125
Capping the capital gain	127
Reasonable attribution – multi-tier structures	128
<u>Example 5</u>	131
Step 1 – capital proceeds relating to the post-CGT property	133
Step 2 – allocating the step 1 amount to the market value excess	134
<u>Example 6</u>	137
Step 1 – capital proceeds relating to the post-CGT property	139
Step 2 – allocating the step 1 amount to the market value excess	140
<u>Example 7</u>	142
Step 1 – capital proceeds relating to the post-CGT property	148
Step 2 – allocating the step 1 amount to the market value excess	149
<i>What company must satisfy the stock exchange listing requirements in paragraph 104-230(9)(a) for CGT event K6 not to happen?</i>	160
Property owned by listed companies	163
<i>Can section 116-30 substitute market value proceeds?</i>	165
<i>Do depreciating assets have cost bases for the purpose of calculating the capital gain?</i>	168
<i>Can subsection 110-45(2) apply to reduce the cost bases of depreciating assets for amounts deducted for their decline in value?</i>	170
<i>Is the CGT discount in Division 115 potentially available for a capital gain made under CGT event K6?</i>	174
<i>Can small business CGT relief in Division 152 apply to a CGT event K6 capital gain?</i>	179
Interactions with other provisions	181
<i>Can a choice be made to avoid the disregarding of a capital gain under subsection 104-230(10) in circumstances where a choice for scrip for scrip rollover would have been available had the shares been acquired post-CGT?</i>	181

<i>If a capital gain is disregarded under subsection 104-230(10), what is the amount of the reduction required to the cost base and reduced cost base of the replacement share under subsection 124-800(2)?</i>	184
<i>If the cost base and reduced cost base of a post-CGT replacement share is reduced under subsection 124-800(2) as a result of a capital gain being disregarded under subsection 104-230(10), is the CGT discount available if a CGT event happens to the share within 12 months of its acquisition?</i>	188
<i>Can CGT event K6 happen when pre-CGT shares end under CGT event C2 on deregistration of a company in liquidation following its winding up?</i>	193
Definitions	196
Key terms	196
Cross reference table of provisions	197
Detailed contents list	198

This Addendum applies both before and after its date of issue.

Commissioner of Taxation

23 July 2025

ATO references

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