

TR 2006/14A1 - Addendum - Income tax: capital gains tax: consequences of creating life and remainder interests in property and of later events affecting those interests

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Addendum

Taxation Ruling

Income tax: capital gains tax: consequences of creating life and remainder interests in property and of later events affecting those interests

This Addendum amends Taxation Ruling TR 2006/14 to reflect changes to the operation of Subdivision 115-C of the *Income Tax Assessment Act 1997* that were made as a result of *Tax Laws Amendment (2011 Measures No. 5) Act 2011*.

TR 2006/14 is amended as follows:

1. Paragraph 23

Omit the paragraph; substitute

23. Any capital gain or loss the trustee makes is taken into account in working out the trustee's net capital gain or loss. A net capital gain is included in the net income of the trust in accordance with subsection 95(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) and taxed in accordance with Subdivision 115-C.

2. Paragraph 48

Omit the paragraph; substitute

48. Any capital gain or loss from CGT event E5 happening to the trustee is taken into account in working out the trustee's net capital gain or loss. A net capital gain is included in the net income of the trust in accordance with subsection 95(1) of the ITAA 1936 and taxed in accordance with Subdivision 115-C.

3. Paragraph 55

Omit the paragraph; substitute

55. Any capital gain or loss from CGT event E6 happening to the trustee is taken into account in working out the trustee's net capital gain or loss. A net capital gain is included in the net income of the trust in accordance with subsection 95(1) of the ITAA 1936 and taxed in accordance with Subdivision 115-C.

4. Paragraph 63

Omit the paragraph; substitute

63. Any capital gain or loss from CGT event E7 happening to the trustee is taken into account in working out the trustee's net capital gain or loss. A net capital gain is included in the net income of the trust in accordance with subsection 95(1) of the ITAA 1936 and taxed in accordance with Subdivision 115-C.

5. Paragraph 82

Omit the paragraph; substitute

82. Both the trustee and life or remainder owner may make a capital gain from CGT event E5, E6 or E7 happening. In these circumstances, subject to the operation of Subdivision 115-C, the life or remainder owner may (in addition to the capital gain they have made from CGT event E5, E6 or E7 happening) also be taken to have an additional capital gain referable to the relevant trust capital gain.

6. Paragraph 84

Omit the paragraph; substitute

84. However section 118-20 is precluded from applying to reduce a beneficiary's capital gain from CGT event E5, E6 or E7 by any amount of trust capital gain assessed to them as a result of the operation of Subdivision 115-C. This is because both of these amounts are included in the beneficiary's assessable income under Part 3-1 and so section 118-20 is not invoked.

7. Paragraph 128

Omit the last sentence; substitute

For the 2004-05 income year, a net capital gain is included in the net income of the trust in accordance with subsection 95(1) of the ITAA 1936 and taxed in accordance with Division 6 of Part III of the ITAA 1936 and Subdivision 115-C.

8. Paragraph 131

Omit the paragraph; substitute

131. However former Law Administration Practice Statement PS LA 2005/1 (GA) set out other approaches that the Commissioner would accept for the taxation of capital gains included in the net income of a trust in income years prior to 2010-11. These other approaches involved the assessment of the capital beneficiary or trustee, rather than an income beneficiary who did not have any entitlement to the trust capital.

9. Paragraph 132

After the paragraph; insert

Note: if the events which happened in 2005 instead happened in the 2010-11 or a later income year, changes to the law introduced by the *Taxation Laws Amendment (2011 Measures No. 5) Act 2011* would change the outcome in paragraphs 129-131. Pursuant to those changes, the beneficiaries would be assessed via Subdivision 115-C on so much of the capital gain to which they were specifically entitled, and only proportionately assessed on the balance (if any) to which no one was specifically entitled.

Former PS LA 2005/1 (GA) would have no application and the trustee could not elect to be assessed on the capital gain pursuant to section 115-230 because trust property representing the capital gain was distributed to Jessica and Harry.

10. Paragraph 151

Omit the last sentence; substitute

For the 2005-06 income year, a net capital gain is included in the net income of the trust in accordance with subsection 95(1) of the ITAA 1936 and taxed in accordance with Division 6 of Part III of the ITAA 1936 and Subdivision 115-C.

11. Paragraph 154

Omit the paragraph; substitute

154. However former Law Administration Practice Statement PS LA 2005/1 (GA) set out other approaches that the Commissioner would accept for the taxation of capital gains included in the net income of a trust in income years prior to 2010-11. These other approaches involved the assessment of the capital beneficiary or trustee, rather than an income beneficiary who did not have any entitlement to the trust capital.

12. Paragraph 155

After the paragraph; insert

Note: if the events which happened in 2005 instead happened in the 2010-11 or a later income year, changes to the law introduced by the *Taxation Laws Amendment (2011 Measures No. 5) Act 2011* would likely change the outcome in paragraphs 152-155.

Pursuant to those changes, the beneficiaries would be assessed via Subdivision 115-C on so much of each capital gain to which they were specifically entitled, and only proportionately assessed on the balance (if any) to which no one was specifically entitled.

Former PS LA 2005/1 (GA) would have no application and the trustee could not elect to be assessed on the capital gain pursuant to section 115-230 because trust property representing the capital gains has been paid or applied for the benefit of Hector's wife and daughters.

13. Legislative references

Insert:

- ITAA 1997 115-230

The changes made by this Addendum will generally apply in relation to the 2010-11 and later income years. However, they will not apply for the 2010-11 income year in relation to capital gains made by trusts with a 2010-11 income year that started before 1 July 2010 (early balancing trusts), unless the trustee made a valid choice to apply the relevant amendments made by the *Tax Laws Amendment (2011 Measures No. 5) Act 2011*.

Commissioner of Taxation

6 March 2013

ATO references

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- trusts