



Notice of Withdrawal

Taxation Determination

Capital gains: is there a disposal where assets are transferred on the merger or de-merger of superannuation funds?

CGT Determination Number 20 is withdrawn with effect from today.

1. CGT Determination Number 20 (TD 20) clarified that there is a disposal for CGT purposes where assets are transferred on the merger or demerger of superannuation funds. This is because when the assets are transferred from one superannuation fund to the other superannuation fund, there is a change of ownership of the assets – see subsections 160M(1), 160M(3) and 160M(3A) of the *Income Tax Assessment Act 1936* (ITAA 1936).
2. Subsection 160M(1) of the ITAA 1936 was rewritten as subsections 104-10(2) and 109-5(1) of the *Income Tax Assessment Act 1997* (ITAA 1997), and subsection 160M(3A) was rewritten as subsections 104-60(5) and 109-5(1) of the ITAA 1997.
3. CGT event E2 in section 104-60 of the ITAA 1997 happens if you transfer a CGT asset to an existing trust unless the exceptions in subsection 104-60(5) of the ITAA 1997 apply. The event may apply to the transfer of CGT assets between superannuation funds.
4. As the replacement provisions expressly provide for a specific CGT event (and set out the exceptions when the specified event does not happen) and section 160M of the ITAA 1936 was repealed by *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* as from 14 September 2006, it is considered that TD 20 is no longer required. Accordingly, this Determination is withdrawn.

Commissioner of Taxation

18 March 2009

ATO references

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