


TR 93/D37 - Income tax: Capital Gains Tax roll-over relief in respect of buildings converted to strata title units

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Draft Taxation Ruling

Income tax: Capital Gains Tax roll-over relief in respect of buildings converted to strata title units

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What this Ruling is about

1. Section 160ZZPG of the *Income Tax Assessment Act 1936* (ITAA) gives the Commissioner power to grant capital gains tax (CGT) roll-over relief in respect of land on which one or more buildings are erected and which is or was subdivided into stratum units, or into stratum units and common property.
2. This Ruling considers the application of section 160ZZPG to strata title conversion of the following home unit ownership arrangements:
 - (a) home unit companies;
 - (b) long term leases;
 - (c) tenancies in common with collateral agreements which grant exclusive occupancy rights to particular units.

Ruling

Roll-over relief for home unit companies and lessors which convert to strata title

3. If a home unit company or long-term lessor:
 - (a) holds an asset in relation to land, being a home unit building erected on the land;

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- (b) subdivides that home unit building into stratum units or stratum units and common property;
- (c) subsequently transfers all of the stratum units to
 - (i) in the case of a home unit company - those shareholders in the company whose shares give them the right to occupy the particular stratum units transferred to them;
 - (ii) in the case of a lessor - those lessees who held leases over the particular stratum units transferred to them; and
- (d) elects that subsection 160ZZPG(2) of the ITAA applies,

CGT roll-over relief will be granted to the company or lessor in respect of any disposal of:

- (e) the unit building;
- (f) the unit building and the common property;
- (g) the individual stratum units; or
- (h) the common property,

that occurs on the strata subdivision of the building or the subsequent transfer of the stratum units.

Roll-over relief for members of home unit companies and lessees when a home unit company or lessor converts to strata title

4. If:

- (a) a member of a home unit company or a lessee holds an asset in relation to land, being:
 - (i) in the case of a member - a share or shares in the home unit company that entitles the member to a right of occupancy to, or to a part of, a building erected on the land;
 - (ii) in the case of a lessee - a lease over a unit in a home unit building;
- (b) the home unit company or lessor subdivides the home unit building owned by it into stratum units or stratum units and common property;
- (c) the home unit company or lessor transfers legal ownership of the units so that:

- (i) in the case of a home unit company - each member owns the stratum unit which corresponds with the particular unit occupied by the member in accordance with the rights attached to the home unit company shares owned by the member;
- (ii) in the case of a lessor - each lessee owns the stratum unit which corresponds with the unit over which the lessee holds a lease; and
- (d) the member or lessee elects that subsection 160ZZPG(2) applies,

CGT roll-over relief will be granted to the member or lessee in respect of any disposal or acquisition by the member or lessee resulting from the subdivision and subsequent transfer.

Effect of roll-over relief for members and lessees

5. If the home unit company is wound up after it has transferred all of the stratum units to members of the company, the shares in the home unit company held by individual members will be treated as if Part IIIA does not apply to any disposal of them which occurs on the winding up of the company.

6. The lease held by an individual lessee will be treated as if Part IIIA does not apply to any disposal of it which occurs as a result of its surrender by the lessee at the time at which an individual stratum unit is transferred to the lessee.

7. If a member acquired shares, or a lessee entered into a lease, before 20 September 1985, the stratum unit held by the member or lessee will be treated as having been acquired by that member or lessee before 20 September 1985.

8. If the shares were acquired, or the lease entered into, on or after 20 September 1985, the member or lessee will be treated as having paid for the stratum unit an amount equal to the cost base, indexed cost base, or reduced cost base:

- (a) in the case of a member - attributable to the member's shares in the company as at the time of the transfer by the home unit company of the stratum unit to the member;
- (b) in the case of a lessee - attributable to the premium paid to the lessor on entering the lease as at the time of the transfer of the individual stratum unit to the lessee.

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Roll-over relief for tenants in common which convert to strata title

9. If two or more persons:

- (a) hold an asset in relation to land, being a home unit building, as tenants in common;
- (b) enter into a written agreement which grants each tenant in common exclusive occupation of a particular home unit;
- (c) subdivide the home unit building into stratum units or stratum units and common property;
- (d) subsequently transfer their interests as tenants in common of each stratum unit so that each tenant in common becomes the registered proprietor of the stratum unit which corresponds with the unit that tenant in common held possession of under the agreement mentioned in paragraph (b); and
- (e) elect that subsection 160ZZPG(2) of the ITAA applies,

then

- (f) CGT roll-over relief will be granted in respect of any disposal or acquisition of:
 - (i) any interest in the unit building;
 - (ii) any interest in the unit building and the common property;
 - (iii) any interest in the individual stratum units; or
 - (iv) the common property,

that occurs on the strata subdivision of the building or the subsequent transfer of any interest or interests in the stratum units between tenants in common.

Effect of roll-over relief for tenants in common

10. The interest in a home unit building held by a tenant in common before conversion will be treated as if Part IIIA does not apply to any disposal of it, or part of it, which occurs as a result of the conversion.

11. If a person acquired his or her interest as a tenant in common before 20 September 1985, the stratum unit will be treated as having been acquired by the person before 20 September 1985.

12. If the interest as a tenant in common was acquired on or after 20 September 1985, the person will be treated as having paid for the stratum unit he or she owns an amount equal to the cost base, indexed cost base, or reduced cost base attributable to that person's interest in

the tenancy in common as at the time of the transfer of interests in the stratum units.

Date of effect

13. This Ruling (that is, the final Taxation Ruling based on this Exposure Draft Taxation Ruling) sets out the current practice of the Australian Taxation Office. It applies (subject to any limitations imposed by statute) for years of income commencing both before and after the date on which it is issued.

Definitions

14. In this Ruling:

'home unit building' includes any building consisting of two or more self-contained dwellings.

'subsequent transfer' includes a transfer which occurs at the time of subdivision by way of the person or persons carrying out the subdivision specifying those persons who are to be registered proprietors of the stratum units created on subdivision.

Explanations

Background - home unit ownership schemes

15. Before the states and territories enacted legislation allowing strata title ownership of home units, no provision was made in real property law for the freehold ownership of a unit in a home unit building. A number of home unit ownership schemes were devised to enable individual ownership of home units. The object of the schemes was to create exclusive occupation rights in relation to individual home units and give 'owners' a *de facto* title to the units. The main home unit ownership schemes, which are dealt with in this Ruling, are:

- (i) **Home unit companies** - under this scheme, a company is the registered proprietor of the building. The unit 'owner' owns a block of shares in the company carrying with it the right to occupy a defined portion of the building. Each member has contractual rights arising from his or her ownership of the shares in the company but has no interest in the land or building;

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- (ii) **Long-term leases** - under this scheme, the purchaser holds a lease for a long term (eg, 99 - 999 years) at a nominal rental, with the purchase price comprising a premium for the grant of the lease. The lease is registrable as a Torrens title interest in the land. However, the unit owner does not hold a freehold estate. The original developer of the land remains as lessor, often with active duties to perform; and
- (iii) **Tenancy in common** - under this scheme, all unit purchasers own the whole of the premises as tenants in common. As tenants in common, each purchaser is entitled to possession of the whole premise's subject to co-ownership and not to exclusive possession of a defined portion of the premises (*Moisley v Mahoney* [1950] V.L.R. 318). In many cases this feature of co-ownership has been overcome by an agreement between all tenants in common, under which each 'owner' has rights of exclusive occupation of a particular unit. These agreements are not enforceable against subsequent owners, nor are they registrable under the Torrens system.

Strata subdivision

16. Strata subdivision is achieved by registering a strata plan of subdivision. On registration of a strata plan of subdivision, the building and land is subdivided into lots *or* lots and common property. Subdivision must involve two or more lots and almost always involves common property. On registration of the plan, an entity known as the 'body corporate' is created. The body corporate is constituted by the registered proprietors of the stratum units and is a separate legal entity. Each lot is allocated a 'unit entitlement' on subdivision. The unit entitlement of each lot in relation to the aggregate entitlement of all lots is specified in the original strata plan and determines the voting rights of the proprietor, the share of the proprietor in the common property and the proportion of contributions levied by the body corporate to cover administrative and other expenses.

The conversion process

17. Generally, conversion of the three home unit ownership schemes covered in this Ruling involves the following two steps:

- (i) the original registered proprietor (i.e., the company, lessor or tenants in common) subdivides the land (referred to throughout this Ruling as the 'home unit building') into

stratum units or stratum units and common property and becomes the owner of the stratum units and common property, if any, created; and

- (ii) the original registered proprietor transfers the stratum units to the shareholders, lessees or tenants in common so that each shareholder, lessee or tenant in common owns the unit which he, she or it occupied immediately before subdivision (the 'subsequent transfer').

18. However, in some jurisdictions it is possible, in limited circumstances, for the original registered proprietor to specify at the time of subdivision the persons who are to be the registered proprietors of the stratum units after subdivision (see, for example, section 223mc of the Real Property Act, 1886 - 1975 (SA)). In these circumstances, the second step outlined above does not need to be taken. For the purpose of simplicity, 'subsequent transfer' by an original proprietor of a stratum unit has been defined in this Ruling to include a transfer which occurs at the time of subdivision by virtue of the original proprietor specifying those persons who are to be the registered proprietors of the stratum units created on subdivision.

Ownership after completion of the conversion process

Ownership of stratum units

19. Stratum units are owned both legally and, unless held on trust, beneficially by each individual unit owner.

Ownership of common property

20. The legal ownership of common property varies under different state and territory Acts. However, beneficial ownership is universally vested in the unit owners:

- (i) in Queensland, Victoria, Tasmania and Western Australia the ownership is vested in the individual unit owners as tenants in common in proportions equal to their lot entitlements (*Building Units and Group Titles Act 1980* (Qld); *Strata Titles Act 1967* (Vic) replaced by the *Subdivision Act 1988* (Vic); *Conveyancing and Law of Property Act 1984* (Tas); *Strata Titles Act 1985* (WA));
- (ii) in New South Wales the ownership is vested in the body corporate as agent for the proprietors as tenants in common in proportions equal to their lot entitlements (*Strata Titles Act 1973* (NSW)); and
- (iii) in South Australia, the Northern Territory and the Australian Capital Territory, the ownership is vested in the

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body corporate as trustee for the proprietors as tenants in common in proportions equal to their lot entitlements (*Real Property Act 1886-1975* (SA); *Unit Titles Act* (NT); *Unit Titles Act 1970* (ACT)).

Section 160ZZPG

Who can be granted roll-over relief under section 160ZZPG?

21. In the home unit ownership schemes outlined in this Ruling, it is generally only the original registered proprietor of the home unit building (ie, the company, lessor or tenants in common) which is a party to subdivision of the building. However, this does not mean that taxpayers who acquire units from the original registered proprietors after subdivision cannot be granted roll-over relief. Section 160ZZPG gives the Commissioner power to grant CGT roll-over relief in relation to a taxpayer *in respect of a subdivision* (subsection 160ZZPG(2)). In *Trustees Executors & Agency Co. Ltd. v. Reilly* [1941] V.L.R. 110 Mann CJ said at p. 111:

'The words "in respect of" are difficult of definition but they have the widest possible meaning of any expression intended to convey some connection or relation between the subject matters to which the words refer.'

Subsequent case law indicates that the phrase 'gathers meaning from the context in which it appears and it is that context which will determine the matters to which it extends' (per Deane, Dawson and Toohey JJ in *The Workers' Compensation Board of Queensland v Technical Products Proprietary Limited* (1988) 165 CLR 642 at 653-654). We consider that, in the context of section 160ZZPG, the words are wide enough to cover both the actual subdivision of the home unit building and any subsequent transfer which is a part of the overall conversion process. Roll-over relief can be granted to both the original registered proprietor of the building **and** the registered proprietors of the stratum units immediately after the completion of the conversion process.

What does section 160ZZPG require?

22. Section 160ZZPG contains three criteria which must be satisfied before the Commissioner can grant roll-over relief to a taxpayer in respect of a subdivision:

- (a) before subdivision, the taxpayer must hold a particular asset, being an asset in relation to the land which is being subdivided (subsection 160ZZPG(1));

- (b) the taxpayer must elect to apply subsection 160ZZPG(2) (paragraph 160ZZPG(2)(a) and subsection 160ZZPG(5)); and
- (c) the Commissioner must be satisfied that:
 - (i) the interests in relation to the stratum units are held by persons who held assets in relation to the land immediately before the subdivision (subparagraph 160ZZPG(2)(b)(i)); and
 - (ii) the rights of occupancy in relation to the stratum units correspond with the rights of occupancy held immediately before the subdivision (subparagraph 160ZZPG(2)(b)(ii)).

CGT implications of conversion of ownership schemes

CGT implications for home unit companies

23. If a home unit company subdivides a home unit building and transfers the individual stratum units created on subdivision to its members, Part IIIA could *prima facie* apply to any disposal which occurs as a result of that subdivision and transfer. Where the home unit company owns the stratum units after the subdivision, no change of ownership of the land has occurred (see Taxation Determination TD 7). A disposal of the individual stratum units and the common property in a home unit building occurs at the point in time at which the shareholders become the legal and beneficial owners of the stratum units. At that time, there is a change in both the legal and beneficial ownership of the assets concerned. Before subdivision takes place, the home unit company has the legal and beneficial ownership of the home unit building. The members have no legal or equitable interest in the assets of the company - they only have the rights of residence and occupation which their shares confer (*Charles v. FC of T* (1954) 10 A.T.D. 328 at 331 per Dixon CJ, Kitto and Taylor JJ; *Fischer v. Easthaven Ltd* (1963) 80 WN (NSW) 1155 at 1158 per Else-Mitchell J). After subdivision, the members become the legal and beneficial owners of the stratum units. Under subsections 160M(1) and (1A) this change in legal and beneficial ownership of the stratum units constitutes a disposal of those units for the purposes of Part IIIA. In some state jurisdictions, the members also become the legal and beneficial owners of the common property while in others, the body corporate becomes the legal owner of the common property and the owners of the stratum units become the beneficial owners of the common property. In either case, both the legal and beneficial ownership of the common property changes. Again, under subsections

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160M(1) and (1A) there is a disposal of the common property for the purposes of Part IIIA. However, roll-over relief under section 160ZZPG will be available in respect of these disposals if the company can satisfy the criteria in that section.

Can a home unit company satisfy the criteria in section 160ZZPG?

24. Yes. A home unit company will satisfy the criteria in section 160ZZPG if:

- (a) Before subdivision the company holds an asset in relation to the land which is being subdivided. This will always be the case - before subdivision, the company is the legal owner of the land and building which is being subdivided.
- (b) The company elects that subsection 160ZZPG(2) is to apply to it in respect of the subdivision.
- (c) The home unit company transfers the stratum units created on subdivision to those shareholders in the company whose shares give them the right to occupy the particular stratum units transferred to them. In that case:
 - (i) the interests in the stratum units are held by persons who held assets in relation to the land immediately before the subdivision. Before the subdivision, each shareholder held an asset in relation to the land (subsection 160ZZPG(6) deems the shares owned by the shareholders to be assets in relation to land).
 - (ii) The rights of occupancy in relation to the home units remain the same both before and after subdivision.

CGT implications for members of home unit companies

25. At the time of the disposal by the company of the stratum units, each member acquires the stratum unit transferred to him, her or it by the company. This acquisition is deemed to occur under subsection 160M(1) and (1A) as a result of the change in the legal and beneficial ownership of the stratum units which occurs at that time. In some jurisdictions, the members also acquire a share in the common property, while in others it is the body corporate which acquires the common property as the agent for the members. If the home unit company is dissolved the members would *prima facie* be taken to have disposed of their shares in the company. Roll-over relief will be available in respect of these acquisitions and disposals under section 160ZZPG if a member satisfies the criteria in that section.

Can a member of a home unit company satisfy the criteria in section 160ZZPG?

26. Yes. A member of a home unit company will satisfy the criteria in section 160ZZPG if:

- (a) Before subdivision the member holds an asset in relation to the land which is being subdivided. Subsection 160ZZPG(6) deems a share in a home unit company to be an asset in relation to land.
- (b) The member elects that subsection 160ZZPG(2) is to apply to it in respect of the subdivision.
- (c) The home unit company transfers the stratum units created on subdivision to those shareholders in the company whose shares give them the right to occupy the particular stratum units transferred to them. In that case:
 - (i) the interests in the stratum units will be held by persons who held assets in relation to the land immediately before the subdivision. Before the subdivision, each shareholder held an asset in relation to the land (i.e., the shares in the company).
 - (ii) The rights of occupancy in relation to the home units will remain the same both before and after subdivision.

CGT implications for lessors of home unit buildings

27. If a lessor subdivides a home unit building and transfers the individual stratum units created on subdivision to his, her or its lessees, the lessor is *prima facie* liable for CGT on any disposal which occurs as a result of that subdivision and transfer. The lessor disposes of the individual stratum units and the common property at the point in time at which the lessees become the legal and beneficial owners of the stratum units. For roll-over purposes, there is a change in both the legal and beneficial ownership of those assets. Before subdivision and transfer, a lessor has legal and beneficial ownership of the home unit building while a lessee has legal and beneficial ownership of a leasehold interest in the building. After subdivision and transfer each lessee owns the freehold title to a unit. Under subsections 160M(1) and (1A) this change in legal and beneficial ownership of the stratum units constitutes a disposal of those units for the purposes of Part IIIA. In some state jurisdictions the lessees also become the legal and beneficial owners of the common property, while in other jurisdictions the body corporate becomes the legal owner of the common property and the owners of the stratum units become the beneficial owners of the common property. In either case, both the legal and beneficial ownership of the common property changes and there is a disposal of the common property for the purposes of Part IIIA. Roll-over relief

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under section 160ZZPG will be available in respect of these disposals if a lessor satisfies the criteria in that section.

Can a lessor satisfy the criteria in section 160ZZPG?

28. Yes. A lessor will satisfy the criteria in section 160ZZPG if:

- (a) Before subdivision the lessor holds an asset in relation to the land which is being subdivided. This will always be the case - before subdivision the lessor is the legal owner of the land and building which is being subdivided.
- (b) The lessor elects that subsection 160ZZPG(2) is to apply to him, her or it in respect of the subdivision.
- (c) The lessor transfers the stratum units created on subdivision to those lessees who held leases over the part of the land covered by the particular stratum units transferred to them. In that case:
 - (i) the interests in the stratum units will be held by persons who held assets in relation to the land immediately before the subdivision. Before the subdivision, each lessee held an asset in relation to the land, being a lease of part of the land.
 - (ii) The rights of occupancy in relation to the home units will remain the same both before and after subdivision.

CGT implications for lessees

29. At the time of disposal by the lessor of the stratum units, each lessee acquires the stratum unit transferred to him, her or it by the lessor. This acquisition is deemed to occur under subsection 160M(1) and (1A) as a result of the change in the legal and beneficial ownership of the stratum units which occurs at that time. In some jurisdictions, the lessees also acquire a share in the common property, while in others it is the body corporate which acquires a share in the common property. The lessees may also surrender, and therefore dispose of, their leases when they acquire the individual stratum units transferred to them. Roll-over relief under section 160ZZPG will be available in respect of these disposals and acquisitions if a lessee satisfies the criteria in that section.

Can a lessee satisfy the criteria in section 160ZZPG?

30. Yes. A lessee will satisfy the criteria in section 160ZZPG if:

- (a) Before subdivision the lessee holds an asset in relation to the land which is being subdivided. This will always be the case because a lease falls within the definition of land for the purposes of Part IIIA (see section 160K).

- (b) The lessee elects that subsection 160ZZPG(2) is to apply to him, her or it in respect of the subdivision.
- (c) The lessor transfers the stratum units created on subdivision to those lessees who held leases over the particular stratum units transferred to them. In that case:
 - (i) the interests in the stratum units will be held by persons who held assets in relation to the land immediately before the subdivision. Before the subdivision, each lessee held an asset in relation to the land, being a lease of part of the land.
 - (ii) The rights of occupancy in relation to the home units will remain the same both before and after subdivision.

CGT implications for tenants in common

31. If tenants in common subdivide a home unit building and transfer their interests so that each tenant in common becomes the registered proprietor of a stratum unit, each tenant in common is *prima facie* liable for CGT on any disposal which occurs as a result of that subdivision and transfer. Disposals occur because the transfer of interests between tenants in common amounts to a change in the legal and beneficial ownership of those interests. Subsections 160M(1) and (1A) deem a disposal to have occurred in these circumstances. Corresponding with these disposals are acquisitions by the tenants in common of the interests disposed of. Again, subsections 160M(1) and (1A) deem this acquisition to have occurred because of the change in legal and beneficial ownership of the interests. Roll-over relief under section 160ZZPG will be available in respect of these disposals and acquisitions if a tenant in common satisfies the criteria in that section. Importantly, roll-over relief will only be granted if, prior to the conversion process, the tenants in common entered into a written agreement granting each tenant in common exclusive occupation of a particular home unit. If no such agreement exists between the tenants in common, then before conversion they will each have occupancy rights in relation to the whole home unit building, rather than occupancy rights in relation to a particular home unit. After conversion, they will have occupancy rights in relation to particular home units. In these circumstances, the tenants in common do not satisfy the requirement in subparagraph 160ZZPG(2)(b)(ii) that the rights of occupancy in relation to the stratum units must be the same as the rights of occupancy which existed before the conversion process took place. The tenants in common are therefore not entitled to roll-over relief.

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Can a tenant in common satisfy the criteria in section 160ZZPG?

32. Yes. A tenant in common will satisfy the criteria in section 160ZZPG if:

- (a) Before subdivision the tenant in common holds an asset in relation to the land which is being subdivided. This will always be the case because an interest in land as a tenant in common falls within the definition of land for the purposes of CGT (see section 160K).
- (b) The tenant in common elects that subsection 160ZZPG(2) is to apply to it in respect of the subdivision.
- (c) After conversion, all of the tenants in common are the registered proprietors of the home units of which they had exclusive occupation under a written agreement before conversion. In that case:
 - (i) the interests in the stratum units will be held by persons who held assets in relation to the land immediately before the subdivision. Before the subdivision, each lessee held an asset in relation to the land, being a lease of part of the land.
 - (ii) The rights of occupancy in relation to the home units will remain the same both before and after subdivision.

The effect of roll-over relief being granted

33. Subsection 160ZZPG(3) sets out the steps which the Commissioner may take once he or she decides it is appropriate to grant roll-over relief under subsection 160ZZPG(2). Those steps fall into three broad categories.

(a) Taxpayer disposes of an original asset

34. If a taxpayer disposes of an 'original asset' as a result of conversion, the original asset is treated as if Part IIIA did not apply in respect of the disposal. An original asset is an asset in relation to land which is held by the taxpayer immediately before the subdivision (paragraph 160ZZPG(1)(b)). Examples of an original asset include:

- a home unit building and the land on which it is erected;
- shares in a home unit company (as discussed in subparagraph 14(i) of this Ruling);
- a long-term lease over a home unit (as discussed in subparagraph 14(ii) of this Ruling); and
- an interest as a tenant in common in a home unit building (as discussed in subparagraph 14(iii) of this Ruling).

(b) Original asset acquired before 20 September 1985

35. If an original asset is acquired before 20 September 1985, the Commissioner will treat an asset acquired by a taxpayer on or after 20 September 1985 as a result of a conversion as if that asset had been acquired before 20 September 1985, that is, the stratum unit acquired by a taxpayer as a result of a conversion will be treated as having been acquired before 20 September 1985.

(c) Original asset acquired after 20 September 1985

36. If an original asset was acquired after 20 September 1985, the Commissioner will attribute to an asset acquired by a taxpayer as a result of a conversion a cost base equal to the cost base, indexed cost base or reduced cost base attributable to the original asset as at the date of acquisition. That is, the stratum unit acquired by a taxpayer as a result of a conversion will be attributed a cost base equal to the cost base, indexed cost base or reduced cost base of the original asset as at the date the stratum unit is transferred to the taxpayer.

Examples

Home unit company conversion to strata title

37. Flatco Ltd (flatco) owns a block of four units in Potts Point, Sydney. Flatco has four members: A, B, C and D. The shares owned by A, B, C and D give each of them exclusive occupation rights to a particular unit in the block. A, B and C bought shares in the company before 20 September 1985. D bought shares in the company on 31 March 1989.

38. A, B, C and D agree that it would be a good idea for flatco to convert the block of units into stratum units and common property. Flatco takes the steps necessary to have a strata plan of subdivision registered. After the plan is registered, flatco transfers to A, B, C and D the stratum unit which each of them occupied before subdivision. For example, before subdivision, A's shares gave her exclusive occupation rights to unit 1 and B's shares gave him exclusive occupation rights to unit 2. Flatco transferred unit 1 to A and unit 2 to B. Flatco is then wound up.

39. Provided flatco elects that subsection 160ZZPG(2) applies, it will not be liable for CGT on any disposal of land or buildings which occurs as a result of the subdivision or transfer. If A, B, and C elect that subsection 160ZZPG(2) applies, the stratum units held by them will be treated as if they were acquired by them before 20 September 1985. If D elects that subsection 160ZZPG(2) applies, D will be treated as having paid for the stratum unit an amount equal to the cost

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base, indexed cost base, or reduced cost base attributable to D's shares as at the date on which the company transferred the stratum unit to D. Further, for CGT purposes, A, B, C and D will not be treated as having disposed of their shares in Flatco.

Lessor converting to strata title

40. Capitalist Co. Ltd (Capco) owns a block of ten flats in inner Melbourne. In March 1960, Capco leased each flat to various lessees for a period of 999 years. Each lessee paid a premium on entering the lease. In addition, a nominal rental of \$60 per annum is payable by lessees. Mr Apart (A) entered into a lease over flat 1 in March 1960. Ms Ment (M) purchased the lease over flat 7 from an original lessee in January 1986.

41. In January 1990, Capco and all of the lessees agree that the building should be converted to stratum units and common property. A strata plan of subdivision is registered and on 10 April 1990, Capco transfers to each lessee the unit over which that lessee holds a lease. Therefore, A now owns the strata title to flat 1 and M owns the strata title to flat 7.

42. Provided that Capco elects that subsection 160ZZPG(2) applies, it will not be liable for CGT on any disposal of land or buildings which occurs as a result of the subdivision or transfer. If A elects that subsection 160ZZPG(2) applies, the stratum unit held by him will be treated as having been acquired by him before 20 September 1985. If M elects that subsection 160ZZPG(2) applies, she will be treated as having paid for her stratum unit an amount equal to the cost base, indexed cost base or reduced cost base attributable to the premium she paid to purchase the lease as at 10 April 1990 (ie, the date of transfer of the unit from the lessor to E). For CGT purposes, neither A nor M will be treated as having disposed of their leases as a result of the conversion.

Conversion of a duplex owned by tenants in common

43. Ms Land (L) and Mr Develop (D) bought a new duplex building in Brisbane in July 1987 as tenants in common in equal shares. They entered into a written agreement which gave D exclusive occupation of unit 1 and L exclusive occupation of unit 2.

44. In March 1989, D and L agree to convert the property into stratum units. They register a strata plan of subdivision. After subdivision, L and D own each unit as tenants in common. On 10 June 1989 (a short time after subdivision is complete), D transfers his half interest in unit 2 to L and L transfers her half interest in unit 1 to D.

45. If L and D each elect that subsection 160ZZPG(2) applies, they will not be liable for CGT on any disposal of land or buildings which

occurs as a result of the subdivision or transfers. Further, L and D will each be treated as having paid for their stratum units an amount equal to the cost base, indexed cost base or reduced cost base attributable to their interests in the duplex as tenants in common as at 10 June 1989 (i.e., the date at which the transfers occurred).

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Commissioner of Taxation

19 August 1993

ISSN 1039 - 0731

ATO references
NO 91/5478-7

BO

Not previously released
to the public in draft form

TR 93/D37

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FOI status draft only - for comment

Price \$1.80

FOI index detail
reference number

subject references

- capital gains tax
- cgt
- roll-over relief
- strata title
- subdivision of land

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