TD 1999/D66 - Income tax: capital gains: if you own an interest in a CGT asset and you acquire another interest in that asset, do the interests remain separate CGT assets or do they merge into a single asset?

This document has been finalised by TD 2000/31.

Draft Taxation Determination

Income tax: capital gains: if you own an interest in a CGT asset and you acquire another interest in that asset, do the interests remain separate CGT assets or do they merge into a single asset?

Preamble

Draft Taxation determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the ATO.

Interests in a CGT asset

1. The interests remain separate CGT assets for capital gains purposes. This is so even if there is a merger of the interests by operation of law or a deliberate amalgamation of them. The interests still remain separate assets for capital gains purposes.

2. The interests are separate CGT assets whether the first interest was acquired before 20 September 1985 (a pre-CGT interest) or was acquired on or after 20 September 1985 (a post-CGT interest).

3. The consequences are that on the occurrence of a CGT event affecting the interests (e.g., CGT event A1 – about disposals of CGT assets - in section 104-10 of the *Income Tax Assessment Act 1997*):

(a) there is a separate cost base for each interest;

(b) capital proceeds received from the event are determined separately for each interest; and

(c) any capital gain or capital loss made on a CGT event happening to any pre-CGT interest is disregarded.

Example 1

4. Sam and Terry jointly purchase land in 1982 to build a holiday house. Terry sells his 50% interest to Sam in 1998. Any capital gain or capital loss he makes is disregarded for capital gains purposes. If Sam later sells the land the sale proceeds are allocated 50% over the pre-CGT and post-CGT interests. The cost base of Sam's post-CGT interest is calculated from the date he purchased it from Terry and it is indexed accordingly. Any capital gain or capital loss he makes on *his pre-CGT interest in the land is disregarded for capital gains purposes. If Sam makes a capital gain on his post-CGT interest in the land it forms part of his assessable income.*

Collectables

5. An interest in a collectable is itself a collectable. A capital gain or capital loss made from an interest in a collectable is disregarded if the market value of the entire collectable at the time the interest is acquired is $500 or less: subsection 118-10(2). If the market value of the entire collectable, at the time a later interest in it is acquired, has increased to more than $500, a capital gain or capital loss may be made from the second interest. This may result in a capital gain or loss being made on one interest in a collectable while a capital gain or capital loss on another interest in the same collectable is disregarded.

Example 2

6. Robert and Steve each acquire a 50% interest in a painting in 1990. They each pay $200, representing 50% of the then market value ($400) of the painting. They have both acquired a collectable.

7. Robert acquires Steve's 50% interest in the painting in 1995 for $600. The painting's market value is at that time $1,200 and, so, Robert has acquired another collectable for $600.

Disposal for $2,000

8. Robert now has two separate assets. Robert disposes of the painting in 1999 for $2,000. $1,000 of the sales proceeds is attributed to each of the two interests in the painting. Robert makes no capital gain on the sale of his 1990 interest. The gain is disregarded because the market value of the painting in 1990 was less than $500. Robert makes a capital gain on the 1995 interest in the painting of $400 ($1,000 less $600, ignoring indexation).

Disposal for $1,000

9. If the painting's value depreciates and Robert disposes of it in 1999 for $1,000, he makes no capital gain or capital loss on the 1990 interest. Robert makes a $100 capital loss (i.e., $600 - $500) which is available to offset against capital gains he makes from other collectables.

Your comments

10. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by date:	10 September 1999
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Commissioner of Taxation

11 August 1999

Subject references:
CGT asset; CGT event A1; collectables; cost base; interest in a collectable; interest in a CGT asset; merger; separate asset; single asset

Legislative references:
ITAA 1997 104-10; ITAA 1997 118-10(2)

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