


# ***TD 1999/D69 - Income tax: capital gains: can property or a right that does not have a 'market value' be a CGT asset?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D69 - Income tax: capital gains: can property or a right that does not have a 'market value' be a CGT asset?*

This document has been finalised by [TD 2000/33](#).

---

---

## Draft Taxation Determination

---

---

### **Income tax: capital gains: is know-how a CGT 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.

1. No. Know-how is not a CGT asset because it is not a form of property nor a legal or equitable right.
2. Know-how is knowledge or information rather than a CGT asset.

#### **Note 1**

3. A right in respect of know-how, such as a contractual right to require the disclosure or non-disclosure of know how, is a CGT asset under subsection 108-5(1) of the *Income Tax Assessment Act 1997*. Similarly, a licence to use know-how is a CGT asset.

#### **Note 2**

4. There may be implications under the revenue provisions of the income tax law for receipts for supplying or imparting knowledge or information: see section 6-5.

#### **Your comments**

5. 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  |
| Contact officer:  | John Nikolas   |
| E-mail address:   | john.nikolas@ato.gov.au  |
| Telephone:        | (02) 9354 3042   |
| Facsimile:        | (02) 9354 3379   |
| Address:          | Australian Taxation Office<br>PO Box CC1<br>Parramatta NSW 2123. |

## Commissioner of Taxation

11 August 1999

---

### *Related Rulings/Determinations:*

IT 2660; TR 93/12; TR 98/3

### *Subject references:*

CGT asset; information; know how; knowledge; licence; rights

### *Legislative references:*

ITAA 1997 6-5; ITAA 1997 108-5(1)

---

### ATO references:

NO 99/10671-9

BO CGT asset summit 1999

ISSN: 1038 - 8982