
Draft Taxation Determination

Income tax: capital gains: for a capital gain you make on CGT event K6 happening in relation to pre-CGT shares you own in a company:

- (a) are you entitled to the general CGT discount in Division 115; and**
- (b) are you entitled to the small business relief in Division 152?**

Preamble

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

General CGT discount in Division 115

1. Yes, if you are an individual, complying superannuation entity or trust and you satisfy the requirements of Division 115. Subsection 115-25(2), Item 2, makes it clear that the general CGT discount can apply to a CGT event K6 situation. The general CGT discount is not available, however, to a company.

Small business relief in Division 152

2. Yes, if your pre-CGT shares are active assets within the meaning of section 152-40 and you satisfy the other requirements of Division 152.

3. The small business relief in Division 152 does not apply to property of the company or to property of any interposed company or trust.

Note 1:

4. In this draft Taxation Determination:

‘company’ has the meaning given by paragraph 104-230(9)(a);

‘post-CGT property’ means property acquired on or after 20 September 1985 and does not include trading stock; and

‘pre-CGT shares’ means shares acquired before 20 September 1985.

Note 2:

5. The views expressed in this draft Taxation Determination in relation to shares in a company apply, adapted as necessary, to an interest in a trust to which section 104-230 applies.

Your comments

6. 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: 22 September 2000
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Previous draft:

Not previously issued in draft form.

Related Rulings/Determinations:

TD 2000/D13; TD 2000/D14; TD 2000/D15; TD 2000/D16; TD 2000/D17; TD 2000/D18;

Subject references:

- active assets
- assets
- CGT event
- CGT event A1
- CGT event K6
- CGT discount
- discount
- property
- shares
- small business
- small business relief

Legislative references:

- ITAA 1997 104-230
- ITAA 1997 104-230(2)
- ITAA 1997 104-230(6)
- ITAA 1997 104-230(9)(a)
- ITAA 1997 Division 115
- ITAA 1997 115-25(2)
- ITAA 1997 Division 152
- ITAA 1997 152-40

ATO references:

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