TD 1999/D68 - Income tax: capital gains: does a unit holder have an interest in the property of a unit trust for capital gains purposes?

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This document has been finalised by TD 2000/32.

Australian Taxation Office

Draft Taxation Determination

TD 1999/D68

Draft Taxation Determination

Income tax: capital gains: does a unit holder have an interest in the property of a unit trust for capital gains purposes?

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. The unit in the unit trust is the relevant CGT asset for capital gains purposes.

2. The scheme of the *Income Tax Assessment Act 1997* is to treat units in a unit trust as the relevant asset for the capital gains provisions rather than any interest a unit holder might have in the underlying property of the unit trust. Note 1 to section 108-5 specifically identifies units in a unit trust as examples of CGT assets.

3. If units were not treated as the relevant assets, every issue of units in a unit trust would involve fractional disposals by every existing unit holder of interests in the property of the unit trust and every redemption of units in a unit trust would involve fractional acquisitions by all other unit holders of interests in the property of the unit trust. This outcome is neither intended by the legislature nor supported by the law.

Note

4. A unit holder in a unit trust is not capable of being absolutely entitled to a CGT asset forming part of the underlying property of the unit trust for the purposes of section 106-50 of the *Income Tax Assessment Act 1997*.

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
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Commissioner of Taxation
11 August 1999

Subject references:
capital gain; CGT asset; interest in property; unit; unit holder; unit trust

Legislative references:
ITAA 1997 106-50; ITAA 1997 108-5

ATO references:
NO 99/10671-9
BO CGT asset summit 1999
ISSN: 1038 - 8982