

TD 2000/D15 - Income tax: capital gains: what is meant by the expression 'property referred to in subsection (2)' as used in subsection 104-230(6) of the Income Tax Assessment Act 1997?

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Draft Taxation Determination

Income tax: capital gains: what is meant by the expression ‘property referred to in subsection (2)’ as used in subsection 104-230(6) of the *Income Tax Assessment Act 1997*?

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.

1. The expression ‘property referred to in subsection [104-230](2)’ in its context in subsection 104-230(6) of the *Income Tax Assessment Act 1997* – as it relates to paragraph 104-230(2)(a) – refers to post-CGT property owned by your company.
2. The expression ‘property referred to in subsection [104-230](2)’ in its context in subsection 104-230(6) – as it relates to paragraph 104-230(2)(b) – refers to post-CGT property owned by any interposed company or trust.
3. A different construction of the expression that has been suggested is that it refers – when it relates to paragraph 104-230(2)(b) – not to post-CGT property of any interposed company or trust but to post-CGT interests owned by your company in property of any interposed company or trust. From a policy perspective this is not a proper construction of the expression in subsection 104-230(6). Even as a matter of grammatical expression, the word ‘were’ would have been used in paragraph 104-230(2)(b) instead of the word ‘was’ if post-CGT interests in property of the interposed company or trust had been intended.
4. The term ‘property’ is not defined for the purposes of CGT event K6 (about pre-CGT shares or trust interests) in section 104-230 although the section specifies that trading stock is excepted.
5. In its context in subsection 104-230(2) the term ‘property’ has its ordinary meaning. The *Macquarie Dictionary* defines ‘property’ to mean ‘that which one owns’. The word ‘property’ in its context in subsection 104-230(2) means that which the company owns.
6. The word ‘property’ in subsection 104-230(2) has a broad meaning. It extends to any kind of property. It covers most ‘CGT assets’ as that expression is defined in subsection 108-5(1) – even

pre-CGT assets – but does not cover a CGT asset which is not property. It includes such things as land and buildings, shares in a company, units in a unit trust, options, debts owed to the company, interests in assets, goodwill and proprietary rights. It also includes assets, capital gains or capital losses from which are disregarded for capital gains purposes, for example cars, motor cycles or similar vehicles and plant: sections 118-5 and 118-24. It extends to active assets as defined in Subdivision 152-A.

Note 1:

7. In this draft Taxation Determination:

'interposed company', in relation to a company (company A), means another company (company B) in which company A owns shares – whether they are pre-CGT shares or post-CGT shares – if company B owns post-CGT property and extends to any company (say, company C) which is an interposed company of an interposed company (for example, company B) if the first mentioned interposed company (company C) owns post-CGT property;

'interposed trust', in relation to a company, means a trust (trust A) in which the company owns an interest – whether it is a pre-CGT interest or a post-CGT interest – if the trust owns post-CGT property and extends to any trust (say, trust B) which is an interposed trust of an interposed trust (for example, trust A) if the first mentioned interposed trust (trust B) owns post-CGT property;

'post-CGT property' means property (that is not trading stock) acquired on or after 20 September 1985;

'pre-CGT asset' means one acquired before 20 September 1985;

'post-CGT shares' means shares acquired on or after 20 September 1985;

'pre-CGT shares' means shares acquired before 20 September 1985; and

'your company' means a company in terms of paragraph 104-230(9)(a) in which you own pre-CGT shares.

Note 2:

8. 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.

Note 3:

9. This draft Taxation Determination should be read in conjunction with Taxation Determination TD 2000/D16 which explains what property you take into account in calculating your capital gain under subsection 104-230(6) if your company is in a single-tier company structure and if it is in a multi-tier company structure. The market value of interests your company has in post-CGT property of interposed companies or trusts is pertinent in subsection 104-230(2) for the 'net value' test. In calculating your capital gain under subsection 104-230(6), however, as draft Taxation Determination TD 2000/D16 explains, it is the market value of certain post-CGT property of your company and of all interposed companies or trusts that is pertinent.

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: 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/D16; TD 2000/D17; TD 2000/D18; TD 2000/D19;

Subject references:

- active asset
- asset
- CGT asset
- CGT event K6
- company
- interposed company
- interposed trust
- private company
- property
- shares
- trading stock
- trust
- trust interest

Legislative references:

- ITAA 1997 104-230
- ITAA 1997 104-230(2)
- ITAA 1997 104-230(2)(a)
- ITAA 1997 104-230(2)(b)
- ITAA 1997 104-230(6)
- ITAA 1997 104-230(9)(a)
- ITAA 1997 108-5(1)
- ITAA 1997 118-5
- ITAA 1997 118-24
- ITAA 1997 995-1(1)
- ITAA 1997 Subdivision 152-A

ATO references:

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