



Draft Taxation Determination

Income tax: capital gains: does a company in which you own pre-CGT shares need to have acquired property at least 12 months before CGT event K6 (about pre-CGT shares and trust interests) in section 104-230 of the *Income Tax Assessment Act 1997* happens for you to be able to index the cost base of the property?

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. Yes. Subsection 104-230(6) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that you make a capital gain from, among certain CGT events, the disposal of pre-CGT shares (CGT event A1) in a company equal to that part of the capital proceeds from the shares that is reasonably attributable to the amount by which the market value of specified post-CGT property is *more* than the sum of the cost bases of that property.
2. Subsection 114-10(1) of the ITAA 1997 provides that you index expenditure in the cost base of a CGT asset if you acquired the asset at least 12 months before the time of a CGT event. The Explanatory Memorandum to the Tax Law Improvement Bill (No 1) 1998 indicates that section 114-10 was rewritten with a change to clarify, for the purposes of subsection 160ZZT(1) of the *Income Tax Assessment Act 1936* - which section 104-230 of the ITAA 1997 replaces - that indexation is only available if a CGT asset was acquired at least 12 months before the relevant CGT event (namely CGT event K6) happens. Under subsection 104-230(5) the time of CGT event K6 is when the other CGT event referred to in paragraph 104-230(1)(b) happens (for example, CGT event A1).
3. A capital gain you make if CGT event K6 happens is calculated by reference to the post-CGT property specified in subsection 104-230(6). So you index the cost base of that post-CGT property.
4. Provided the post-CGT property was acquired at least 12 months before the time of CGT event K6, you index the cost base of that item of property from the date of its acquisition to the time of CGT event K6 (being the time the CGT event happened in relation to your shares).

Note 1:

5. In this draft Taxation Determination:

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

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

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

Note 2:

6. 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:

7. Indexation is not available for CGT assets acquired after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999: section 114-1. If CGT event K6 happens after that time to pre-CGT shares or an interest in a trust acquired at or before that time, indexation is frozen as at 30 September 1999 if you choose to calculate your capital gain using indexation rather than reduce your capital gain by the general CGT discount (if your capital gain is eligible for the discount): subsections 960-275(2) and (3).

Your comments

8. 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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Commissioner of Taxation

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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/D19;

Subject references:

- capital gain
- capital proceeds
- CGT event
- CGT event A1
- CGT event K6
- cost base
- indexation
- private company; private trust
- property
- trust interest

Legislative references:

- ITAA 1936 160ZZT(1)
 - ITAA 1997 104-230
 - ITAA 1997 104-230(2)
 - ITAA 1997 104-230(6)
 - ITAA 1997 104-230(9)(a)
 - ITAA 1997 114-1
 - ITAA 1997 114-10
 - ITAA 1997 114-10(1)
 - ITAA 1997 114-10(2)
 - ITAA 1997 960-275(2)
 - ITAA 1997 960-275(3)
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ATO references:

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