

Capital gains tax – limiting the trading stock exception for superannuation funds

Proposals Paper
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CONSULTATION PROCESS

Request for feedback and comments

We invite interested parties to lodge written submissions on the design of this measure.

We also encourage the identification of any other issues, including interaction issues with other parts of the tax law that may be relevant to the design of this measure. While submissions may be lodged electronically, by post or by facsimile, electronic lodgement is preferred.

Submissions will be made available on the Treasury website unless you clearly indicate that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.

Closing date for submissions: Friday, 24 June 2011

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SUMMARY

The 2011-12 Budget included a measure to ensure that any gains or losses on certain assets of a superannuation fund will be taxed under the capital gains tax (CGT) provisions. It removes any doubt about the extent of the CGT primary code that may arise for the superannuation industry if some superannuation funds treat certain assets as trading stock.

1. BACKGROUND

The CGT provisions are the primary code for taxing gains or losses on the assets of a complying superannuation fund, approved deposit fund, or pooled superannuation trust (referred to as a 'complying superannuation entity') (see section 295-85 of the *Income Tax Assessment Act 1997* (ITAA 1997)).

However, subsection 295-85(4) of the ITAA 1997 provides an exception to this rule, allowing the disposal of a complying superannuation entity's trading stock to be recognised on revenue account under the trading stock provisions.

This allows the superannuation entity to deduct losses on assets held as trading stock against non-CGT income (such as dividends or interest) of the superannuation entity, rather than being quarantined to offsetting only capital gains.

The question of whether a trustee holds shares (for example) as business assets is a question of fact. Even where shares are held as assets of a business, it remains necessary to consider whether such shares are trading stock of that business. This involves a further characterisation process which depends on the facts of each individual case.

2. PROPOSED AMENDMENTS

This measure removes the trading stock exception to the CGT primary code rule for a complying superannuation entity for assets covered by section 275-105 of the ITAA 1997 — primarily shares, units in a trust and land.

- This is aligned with the treatment which applies to such assets when the trustee invests in them through a managed investment trust which has elected capital treatment under the managed investment trust rules.
- Complying superannuation entities will still be able to access the trading stock exception to the CGT primary code rule for assets other than those covered by section 275-105 of the ITAA 1997, if such assets are appropriately treated as trading stock.

Transitional rules ensure that complying superannuation entities will continue to treat covered assets as trading stock if they held and accounted for them as trading stock just before the time of announcement.

This measure applies to certain assets of complying superannuation entities solely for income tax purposes and the regulatory requirements under the *Superannuation Industry (Supervision) Act 1993* remain unchanged for those assets.