

**DETERMINATION** > FINANCIAL ARRANGEMENTS > GENERAL

# Unit Trusts with Repurchase Obligations

Issued: 30 July 1987

G4

This Determination may be cited as "Determination G4: Unit Trusts with Repurchase Obligations".

## 1 Explanation (which does not form part of the determination)

This Determination deals with publicly-available unit trusts where the trust manager has agreed to purchase interests in the unit trust from unit holders at a price that reflects the value of the net assets of the trustees of the unit trust. It states that the gain or loss arising on the sale or disposal of an interest in such a unit trust is attributable solely to the interest in the unit trust.

The interest of a unit holder in a unit trust is deemed to be a share under section 211 of the Income Tax Act 1976. A share is an "excepted financial arrangement" for the purposes of sections 64B to 64M of the Act. The effect of this is that the gain or loss is attributable to an excepted financial arrangement and is not dealt with under sections 64B to 64M of the Income Tax Act 1976.

## 2 Reference

This Determination is made pursuant to section 64E(1)(e) of the Income Tax Act 1976.

## 3 Scope

This Determination shall apply to every publicly-available unit trust in relation to which there is a market-value buy-back obligation on the trust manager.

## 4 Principle

The intention of the regime, enacted as sections 64B to 64M of the Income Tax Act 1976, for the income tax treatment of financial arrangements, is to deal only with income, gains or losses, and expenditure in relation to debt and surrogates for debt. It is not intended to affect the income tax treatment of equity where equity is not used to construct a surrogate for debt.

A publicly-available unit trust is a vehicle for public participation in a business venture. An interest in such a unit trust is equity. This is recognised by section 211 of the Income Tax Act 1976, which provides that for the purposes of the Income Tax Act—

- (a) Every unit trust shall be deemed to be a company; and

(b) the interests of the unit holders in a unit trust shall be deemed to be shares in the company; and

(c) the unit holders shall be deemed to be shareholders in the company.

An obligation to purchase amounts to an option to sell for the person that may have the obligation enforced. An option to sell at market-value has no value.

The market-value buy-back obligation on a trust manager amounts to an undertaking on the part of the trust manager to make a market in interests of the trust or to arrange an orderly realisation of trust assets to ensure that unit holders may realise their investments.

## 5 Definitions

In this Determination, unless the context otherwise requires—

(a) Expressions used have the same meanings as in the Income Tax Act 1976, and where an expression is given a particular meaning for the purposes of sections 64B to 64M or 211 of that Act, the expression shall have that meaning in this Determination:

(b) "Market-value buy-back obligation on the trust manager", in relation to a unit trust, means an undertaking by or an obligation upon the trust manager that—

(i) Is recorded in the trust deed or in a prospectus issued to promote the sale of interests in the unit trust; and

(ii) Binds the trust manager to purchase, at a price that reflects the market-value of the net assets of the trustees, interests in the unit trust offered to the trust manager for purchase:

(c) "Publicly-available unit trust" means a unit trust the interests in which may be freely traded without seeking the approval of any person, other than a person charged by statute with the regulation of offers of securities generally to the public or the regulation of trading in securities generally:

(d) "Security" has the meaning given in section 2 of the Securities Act 1978:

(e) "Trust manager", in relation to a unit trust, means a person—

(i) charged with the management of the affairs of the unit trust, or some part of those affairs; and

(ii) Recognised in the trust deed as having that responsibility:

(f) "Trust deed", in relation to a unit trust, means the deed creating the trusts upon which the trustees hold the assets of the unit trust:

## 6 Method

Where—

- (a) A person holds an interest in a publicly-available unit trust in relation to which there is a market-value buy-back obligation on the trust manager; and
- (b) There is no other arrangement that includes the interest and the market-value buy-back obligation on the trust manager,—

in calculating the assessable income of the person in any income year—

- (c) Any gain or loss on the sale or disposal of the interest is attributable to the interest; and
- (d) The acquisition price of the interest is attributable to the interest; and
- (e) The consideration receivable by the person in relation to the interest, including—
  - (i) any consideration that is a dividend; and
  - (ii) any consideration that is received or receivable on the sale or disposal of the interest,—

is attributable to the interest.

## 7 Example

Each Unit Trust Deed that has a repurchase option will, by virtue of section 16(2) of the Unit Trusts Act 1960, also contain a mechanism for calculating a minimum repurchase price. For the purposes of this Determination it will suffice to use the mechanism specified in the respective Trust Deeds.

Such a mechanism should allow the trust manager to arrive at a figure for Net Asset Value (less any administrative costs) which would be divided by the number of units so as to arrive at a repurchase price per unit.

Examples of suitable mechanisms are contained in the Trust Deeds for the New Zealand Rural Property Trust dated the 30th day of January 1987 and the Qtron Share Portfolio Trust dated the 26th day of July 1985.

## About this document

General determinations set out the Commissioner's view on how the financial arrangements rules apply to a specific type of financial arrangement. All general determinations are binding on the Commissioner and some are also binding on taxpayers.