TD 2 - Capital Gains: What are the CGT consequences for the lender (Creditor) when a debt is waived?

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This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2000*

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

CGT Determination Number 2

Capital Gains: What are the CGT consequences for the lender (Creditor) when a debt is waived?

Determination

1. The debt is an asset of the lender (paragraph 160A(a)). The debt is disposed of when the lender waives the debt (paragraph 160M(3)(b)). Whether a capital gain or loss occurs on the disposal of the debt depends firstly on the consideration received for the disposal and the appropriate cost base of the debt.

2. If the lender receives no consideration for the disposal of the debt, the lender is taken to have received an amount equal to the market value of the debt at the time of the disposal (paragraph 160ZD(2)(a)). The lender is also taken to receive market value on the disposal of the debt when the consideration is less than the market value of the debt (paragraph 160ZD(2)(c)). The market value of the debt at the time of its disposal is worked out as though the debt was not waived and was never intended to be waived (subsection 160ZD(2A)).

3. Generally, the cost base of the debt to the lender is the amount of the loan. The indexed cost base and the reduced cost base will be appropriately adjusted.

4. A capital loss is not allowed on the disposal of a non-listed personal-use asset (subsection 160Z(7)). Capital losses in respect of listed personal-use assets are treated in accordance with section 160ZQ. In some cases, a debt will be a personal-use asset of the lender (paragraph 160B(1)(b)). These are:

- when the debt relates to an asset that was previously a personal-use asset of the taxpayer; or
- when the debt was not owed to the lender in the course of gaining or producing income or carrying on a business by the lender.

Example:

A father lends his son money to buy a house. If the son is later not able to repay the loan and the father waives the debt, the father is not allowed a capital loss for the disposal of the debt.

COMMISSIONER OF TAXATION
10 September 1991

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