


***TD 93/D132 - Income tax: capital gains: how is the adjusted payment calculated pursuant to subsection 160ZM(3A) of the Income Tax Assessment Act 1936 where there is a non-assessable distribution from a unit trust and when is the adjusted payment used for the purposes of calculating a capital gain or loss under section 160ZM?***

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This document has been finalised by TD 93/170.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

## Draft Taxation Determination

**Income tax: capital gains: how is the adjusted payment calculated pursuant to subsection 160ZM(3A) of the *Income Tax Assessment Act 1936* where there is a non-assessable distribution from a unit trust and when is the adjusted payment used for the purposes of calculating a capital gain or loss under section 160ZM?**

1. The general position covering the capital gains consequences of non-assessable distributions as they affect the calculation of the cost base of an asset is set out in TD 93/D131. Specific provisions relating to the impact of certain non-assessable distributions (i.e. distributions attributable to deductions for capital expenditure on travel accommodation and on certain buildings and structural improvements; distributions from income that are exempt income because of section 124ZM or 124ZN; distributions from the consideration in respect of a disposal of shares in a PDF; and distributions from an amount that, because of section 159GZZZZE, is not included in assessable income) are included in subsection 160ZM(3A).

2. The effect of subsection 160ZM(3A) is to exclude certain amounts from the calculation of the indexed cost base as required under paragraph 160ZM(2)(a) and subsection 160ZM(3) where non-assessable distributions are received. Non-assessable distributions generally reduce the indexed cost base of an asset. Subsection 160ZM(3A) amounts do not reduce the indexed cost base of an asset.

3. No adjustments are made under subsection 160ZM(3A) to non-assessable distributions when calculating the reduced cost base of an asset. If a taxpayer claims a loss on the disposal of units in a unit trust where non-assessable distributions have been received, subsection 160ZM(3A) is not taken into account in the calculation of the reduced cost base for purposes of paragraph 160ZM(2)(b).

*Example:*

*Units acquired on 1 July 1990 for \$10,500*

*Units sold on 30 September 1992*

*Non-assessable distribution of \$9,000 received on 30 June 1992 which includes subsection 160ZM(3A) amount of \$3,000*

|                             |                   |       |
|-----------------------------|-------------------|-------|
| Relevant indexation factors | 1 July 1990       | 103.3 |
|                             | 30 June 1992      | 107.3 |
|                             | 30 September 1992 | 107.4 |

What is the cost base in order to determine whether there has been :

- (i) a capital gain?
- (ii) a capital loss?

(i) To determine whether there has been a capital gain, the following calculation is made under subparagraph 160ZM(2)(a)(i):

|  |          |
|--|----------|
| Deemed disposal consideration as at 30 June 1992 ( $\$10,500 \times [107.3/103.3]$ ) | \$10,907 |
| Less adjusted payment (\$9,000 - \$3,000)  | \$ 6,000 |
| Deemed re-acquisition consideration as at 30 June 1992                               | \$ 4,907 |
| Therefore indexed cost base as at 30 September 1992 ( $4,907 \times [107.4/107.3]$ ) | \$ 4,912 |

A capital gain will arise if the sale price exceeds \$4,912.

(ii) To determine whether there has been a capital loss, the following calculation is made under subparagraph 160ZM(2)(b)(i):

|  |         |
|--|---------|
| Deemed re-acquisition consideration as at 30 June 1992 |         |
| (\$10,500 [unindexed] - \$9,000)                       | \$1,500 |
| Therefore reduced cost base as at 30 September 1992    | \$1,500 |

A capital loss will arise if the sale price is less than \$1,500. It should be noted that no reduction is made to the non-assessable distribution in the calculation of the reduced cost base.

## Commissioner of Taxation

3/6/93

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