TD 93/D285 - Income tax: capital gains: can a trustee of a trust estate be an 'original beneficial owner' for the purpose of section 160ZZI of the Income Tax Assessment Act 1936?

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This document has been finalised by TD 94/31.

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: can a trustee of a trust estate be an "original beneficial owner" for the purpose of section 160ZZI of the *Income Tax Assessment Act 1936*?

1. Where an assurance policy on the life of a person is taken out by a trustee of a trust estate on behalf of beneficiaries of that trust, the trustee is not considered to be an "original beneficial owner" for the purpose of section 160ZZI. The trustee is, in such cases, the *legal* owner of the rights under the policy, but by virtue of the fact that the trustee holds property *on trust* for another person, the trustee can never be the *beneficial* owner.

2. Accordingly, on disposal of rights under the policy, the trustee would be subject to CGT where an amount of money or other consideration is paid by the trustee to acquire those rights (subsection 160ZZI(3)) **unless**:-

(i) subsection 160ZZI(3A) applies, or

(ii) the trustee is a bare trustee i.e. there is a beneficiary who is *absolutely entitled* to an asset (the rights under the policy) as against the trustee. By virtue of section 160V, the disposal of rights under the policy by the bare trustee will be deemed to be a disposal by the beneficiary (the "original beneficial owner").

Commissioner of Taxation
16/12/93

FOI INDEX DETAIL: Reference No.
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