

TD 95/D29 - Income tax: capital gains: is roll-over relief under section 160ZZO of the Income Tax Assessment Act 1936 available on the disposal of an asset after 25 June 1992 under subsection 160M(6) or subsection 160M(7)?

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This document has been finalised by TD 96/9.

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: is roll-over relief under section 160ZZO of the *Income Tax Assessment Act 1936* available on the disposal of an asset after 25 June 1992 under subsection 160M(6) or subsection 160M(7)?

1. Roll-over relief is available in relation to a disposal of an asset by a company under subsection 160M(6), provided the other requirements of section 160ZZO are satisfied, but not for a disposal under subsection 160M(7).
2. Section 160ZZO allows roll-over relief if a company (the transferor) disposes of an asset to another company (the transferee) and the transferee is related to the transferor when the disposal takes place.
3. Subsection 160M(6) applies if a person creates an asset that is not a form of corporeal property and, on its creation, the asset is vested in another person. The subject of subsection 160M(6) is an asset that is created and disposed of by one person to another person. This is consistent with the requirements for section 160ZZO to apply, namely, a disposal of an asset by a transferor to a (related) transferee.
4. In contrast, for subsection 160M(7) to apply, either an act or transaction must take place in relation to an asset, or an event affecting an asset must occur, and money or other consideration must be received by the owner of the underlying asset by reason of that act, transaction or event. If subsection 160M(7) applies, the act, transaction or event is deemed to constitute a disposal of a fictitious or notional 'asset' by the owner of the underlying asset. The 'asset' is deemed to be created by the disposal. The disposal of this notional asset is not deemed to be to another person. No-one is deemed to acquire the notional asset. Nor is there a disposal of the underlying asset or any other actual asset to another person. Given the nature of the 'asset', namely, one created by the disposal (i.e., created by the act, transaction or event), it is difficult to see how the notional asset could be disposed of to anyone. Accordingly, section 160ZZO cannot apply because there is no disposal of the notional asset to a transferee.

Example:

In 1995 A Pty Ltd grants a licence to B Pty Ltd, another member of the A Pty Ltd group, and receives \$50,000 for the grant. The licence is an asset created under subsection 160M(6) and roll-over relief is available under section 160ZZO on its disposal. The cost base of the licence to B Pty Ltd is the amount that was the indexed cost base to A Pty Ltd (subparagraph 160ZZO(1)(f)(i)) and not the \$50,000 paid by B Pty Ltd.

Commissioner of Taxation

29/11/95

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Legislative Ref: ITAA 160M(6); ITAA 160M(7); ITAA 160ZZO; ITAA 160ZZO(1)(f)(i)

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