


IT 2584 - Income tax : capital gains : exemption of certain gains and losses : betting and lottery winnings

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING NO. IT 2584

INCOME TAX : CAPITAL GAINS : EXEMPTION OF CERTAIN GAINS
AND LOSSES : BETTING AND LOTTERY WINNINGS

F.O.I. EMBARGO: May be released

REF

N.O. REF: 90/2987-7

DATE OF EFFECT: Immediate

B.O. REF:

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011885	CAPITAL GAINS EXEMPTION FOR BETTING AND LOTTERY WINNINGS	160ZB 160ZH(9) (a)

PREAMBLE The provisions of Part IIIA of the Income Tax Assessment Act 1936 relate to capital gains and capital losses. With some limited exceptions, the provisions deem a capital gain or a capital loss to accrue to a taxpayer upon the disposal, on or after 20 September 1985, of any asset that was acquired on or after that date.

2. Winnings from betting, a lottery or other form of gambling or a game with prizes are generally assets for the purposes of Part IIIA. However, subsection 160ZB(2) provides that a capital gain shall not be taken to have accrued to a taxpayer by reason of the taxpayer having received such winnings. On the other hand, subsection 160ZB(3) provides that a taxpayer shall not be taken to have incurred a capital loss as a result of any act done or transaction entered into by the taxpayer by way of betting or participating in a lottery or other form of gambling or a game with prizes. Raffle prizes are considered to be winnings for the purposes of subsections 160ZB(2) and 160ZB(3).

3. This Ruling discusses some aspects of the interpretation and operation of these provisions within the broader framework of Part IIIA.

RULING

4. The effect of subsections 160ZB(2) and 160ZB(3) is that the receipt of winnings from, for example, race bets, Tattsлото, Lotto and other such lotteries, raffles and "quiz shows" is deemed not to constitute the accrual of a capital gain for the purposes of Part IIIA. If a taxpayer outlays more than is received by way of winnings, a capital loss is deemed not to accrue to the taxpayer.

5. Leaving aside money winnings, where a taxpayer subsequently disposes of property that constituted winnings, a capital gain or capital loss may accrue to the taxpayer as a result of the disposal of that asset i.e., the provisions of Part IIIA will have their normal effect in such circumstances.

6. For example, if a taxpayer disposes of a house and land which was won in a lottery and the house did not become the taxpayer's principal place of residence, a capital gain will accrue to the taxpayer if the consideration in respect of the disposal exceeds the cost base or indexed cost base of the property.

7. In determining the cost base or indexed cost base of the property, subsection 160ZH(9)(a) will apply and the taxpayer shall be deemed to have paid or given as consideration in respect of the acquisition of the property an amount equal to the market value of property at the time of the acquisition. The time of acquisition of the property is the time when the change in ownership of the asset occurred.

8. Using the same example as in paragraph 6, a capital loss will accrue to the taxpayer if the consideration in respect of the subsequent disposal is less than the reduced cost base of the property to the taxpayer.

9. In the case of the disposal of money winnings, no capital gain or capital loss will normally accrue because the consideration in respect of the disposal is the same as the deemed consideration in respect of the acquisition of the money.

10. It is common for a motor vehicle to be the major prize in lotteries, raffles etc. Provided the motor vehicle is of the kind ordinarily excluded from the operation of Part IIIA, no capital gain or capital loss will be deemed to accrue to a taxpayer who disposes of such a prize irrespective of whether the taxpayer uses the motor vehicle prior to its disposal.

COMMISSIONER OF TAXATION
10 May 1990