

***TD 93/170 - 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?***

! This cover sheet is provided for information only. It does not form part of *TD 93/170 - 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?*

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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## Taxation Determination

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### **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/AA. 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. Amounts referred to in paragraphs 160ZM(3A)(a), (b), (c) and (d) 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, the reduced cost base is reduced by the full amount of any non assessable distributions.

*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 an amount of \$3,000 attributable to a deduction allowed under Division 10C or 10D of Part IIIA.*

<i>Relevant indexation factors</i>	<i>30 September 1990</i>	<i>103.3</i>
	<i>30 June 1992</i>	<i>107.3</i>
	<i>30 September 1992</i>	<i>107.4</i>

*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):*

	<i>Deemed disposal consideration as at 30 June 1992 (\$10,500 x [107.3/103.3])</i>	
	<i>\$10,910</i>	
	<i>Less adjusted payment (\$9,000 - \$3,000)</i>	<i>\$</i>
<i>6,000</i>		
	<i>Deemed re-acquisition consideration as at 30 June 1992</i>	<i>\$ 4,910</i>
	<i>Therefore indexed cost base as at 30 September 1992 (4,910 x [107.4/107.3])</i>	<i>\$</i>
<i>4,915</i>		

*A capital gain will arise if the sale price exceeds \$4,915.*

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

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

*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**

2/9/93

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