

TD 93/171 - Income tax: capital gains: what are the consequences where a taxpayer receives a non assessable distribution in respect of units in a unit trust and the distribution exceeds the indexed cost base of the units?

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

! 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).

Taxation Determination

Income tax: capital gains: what are the consequences where a taxpayer receives a non assessable distribution in respect of units in a unit trust and the distribution exceeds the indexed cost base of the units?

1. The general position covering the capital gains consequences of non assessable unit trust distributions is set out in TD 93/169.
2. Subsection 160ZM(3) of the *Income Tax Assessment Act 1936* covers the situation where a taxpayer receives a non assessable distribution which exceeds the indexed cost base. In this situation, there will be two consequences:-
 - (i) the indexed cost base will reduce to nil;
 - (ii) an assessable capital gain equal to the excess will arise.
3. Any subsequent non assessable distribution will constitute a capital gain.

Example:

Indexed cost base before distribution \$8,500

Non assessable distribution \$9,000

The non assessable distribution is an "adjusted payment" as defined in subsection 160ZM(3A).

A capital gain of \$500 arises upon distribution.

Indexed cost base after distribution will be nil.

Commissioner of Taxation

2/9/93

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Subject Ref: Capital gains tax; unit trust distributions

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