TD 94/31 - Income tax: capital gains: what is meant by the term "original beneficial owner" as used in subsection 160ZZI(3) of the Income Tax Assessment Act 1936 (the Act)?

This cover sheet is provided for information only. It does not form part of *TD 94/31 - Income tax: capital gains: what is meant by the term "original beneficial owner" as used in subsection 160ZZI(3) of the Income Tax Assessment Act 1936 (the Act)?*

This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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

Australian Taxation Office

Taxation Determination TD 94/31

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).

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]

Taxation Determination

Income tax: capital gains: what is meant by the term "original beneficial owner" as used in subsection 160ZZI(3) of the *Income Tax Assessment Act 1936* (the Act)?

1. The exemption from Part IIIA provided by section 160ZZI is intended to apply to all disposals of rights, or any interest in rights, under a life assurance policy **other than** where a person trades or deals (including holding until maturity) in those rights, or any interest in those rights, as a result of acquiring them for money or other consideration from a previous owner.

2. Although the term "original beneficial owner" is not defined in the Act, in the context of section 160ZZI, and for the purpose only of that section, an "original beneficial owner" of any of the rights, or any interest in any of the rights, under a policy of life assurance is the first person who:

(i) at the time the policy is effected, holds such rights, or any interest in such rights, and

(ii) possesses all the normal incidents of beneficial ownership (for example, is entitled to the benefits of the policy proceeds **and** has the power of management and control over the policy as well as the power to transfer, grant as security, surrender or otherwise dispose of, the policy).

3. Where two or more persons jointly effect a policy of life assurance, each person may be an "original beneficial owner". Furthermore, the person holding the rights or any interest in rights under a policy of life assurance may be an individual, a company or a trustee of a trust estate alone or in partnership.

4. It is generally accepted in trust law that the trustee of a trust estate is the legal owner, and not the beneficial owner, of rights, or any interest in rights, under a policy of life assurance taken out and held on trust for the beneficiaries of that trust. For the purpose of, and in the context of section 160ZZI, a trustee will be regarded as the "beneficial owner" of such rights or any interest in such rights if the trustee possesses all the normal incidents of beneficial ownership as referred to in paragraph 2 (ii) above.

Note:

(i) Where a beneficiary of a trust is absolutely entitled as against the trustee to any of the rights, or any interest in any of the rights under the policy, the beneficiary (and not the trustee) will be the relevant taxpayer for CGT purposes in respect of the disposal of such rights, or an interest in any of the rights.

(ii) Where a trustee of a complying superannuation fund, complying ADF or PST disposes of any rights, or any interest in any of the rights under a policy of life assurance, subsection 160ZZI(3A) applies to exempt any gains or losses.

Commissioner of Taxation
21/4/94

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