



TD 95/22W - Income tax: capital gains: forfeited deposits: when is an option, that is deemed by paragraph 160ZZC(12)(a) of the Income Tax Assessment Act 1936 to have been granted, disposed of in terms of paragraph 160ZZC(3)(a)?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 20 May 1998

Notice of Withdrawal

Income tax: capital gains: forfeited deposits: when is an option, that is deemed by paragraph 160ZZC(12)(a) of the *Income Tax Assessment Act 1936* to have been granted, disposed of in terms of paragraph 160ZZC(3)(a)?

The Tax Law Improvement Project is restructuring, renumbering and rewriting the income tax law in plain language. The Parliament is amending the income tax law progressively to reflect these aims. As new laws come into effect, Taxation Rulings (including Taxation Determinations) about old laws are being brought into line with them.

This Determination is withdrawn to the extent it implies that a forfeited deposit under an actual contract of sale is paid or given as consideration in respect of the grant of an option to which subsection 160ZZC(12) of the *Income Tax Assessment Act 1936* applies.

The Determination draws no distinction between the forfeit of a holding deposit and the forfeit of a deposit under an actual contract of sale. The Determination expresses the view that a forfeited deposit - by implication, of either type - is paid or given as consideration in respect of the grant of an option disposed of at the time of its forfeiture.

The Full Federal Court of Australia in *FC of T v Guy* 96 ATC 4520; (1996) 32 ATR 590 held, however, that subsection 160ZZC(12) does not apply to a deposit under an actual contract of sale; if such a deposit is forfeited, it is not paid or given as consideration in respect of the grant of an option for the purposes of the subsection.

A Taxation Ruling is being prepared that explains the capital gains consequences of forfeited deposits for a vendor and a purchaser.

Commissioner of Taxation

20 May 1998