

TD 93/D131 - Income tax: capital gains: when is indexation of the cost base of units in a unit trust available and how is it calculated where a taxpayer has received non-assessable distributions in respect of those units?

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This document has been finalised by TD 93/169.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Taxation Determination

Income tax: capital gains: when is indexation of the cost base of units in a unit trust available and how is it calculated where a taxpayer has received non-assessable distributions in respect of those units?

1. The standard rule for CGT purposes that indexation is available where a capital gain arises, or where there is neither a capital loss nor a capital gain, on the disposal of an asset still applies. Indexation is not available where a taxpayer seeks to claim a capital loss on the disposal. However the general rules for calculating the indexed cost base or the reduced cost base of the units are modified where non-assessable distributions have been received.
2. The provisions which allow for the calculation of gains or losses in these circumstances are included in section 160ZM of the *Income Tax Assessment Act 1936*.
3. Apart from the operation of subsection 160ZM(3) (see TD 93/D133), a capital gain or capital loss will only arise on the actual disposal of the units. In order to ascertain whether any such gain or loss has arisen, subsection 160ZM(2) deems the units to have been disposed of and immediately re-acquired each time a non-assessable distribution is received. The reason for deeming disposal and re-acquisition is to enable the cost base of the units to be adjusted each time a non-assessable unit trust distribution is received.
4. Paragraph 160ZM(2)(a) is used to determine whether there has been a capital gain on an eventual disposal. Indexation is used in this calculation.
5. Paragraph 160ZM(2)(b) is used to determine whether there has been a capital loss on an eventual disposal. Indexation is not applicable under this provision as a capital loss is determined having regard to the reduced cost base of the units.

Example:

Units acquired on 28 June 1990 for \$10,000

Units sold on 1 July 1992

<i>Non assessable distributions received</i>	<i>30 June 1991</i>	<i>\$1,000</i>
	<i>30 June 1992</i>	<i>\$1,000</i>

The non-assessable distributions do not include any "adjusted payment" as defined in subsection 160ZM(3A).

Relevant indexation factors	30 June 1990	102.5
	30 June 1991	106.0
	30 June 1992	107.3
	1 July 1992	107.4

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):

Deemed disposal consideration as at 30 June 1991 ($\$10,000 \times [106.0/102.5]$)	\$10,341
Less non assessable distribution 30 June 1991	\$ 1,000
Deemed re-acquisition consideration as at 30 June 1991 ($\$10,341 - \$1,000$)	\$ 9,341
Deemed disposal consideration as at 30 June 1992 ($\$9,341 \times [107.3/106.0]$)	\$ 9,456
Less non-assessable distribution 30 June 1992	\$ 1,000
Deemed re-acquisition consideration as at 30 June 1992	\$ 8,456
Therefore indexed cost base as at 1 July 1992 is [$\$8,456 \times 107.4/107.3$]	\$ 8,464

A capital gain will arise if the sale price exceeds \$8,464.

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

Deemed re-acquisition consideration as at 30 June 1991 ($\$10,000$ [unindexed] - $\$1,000$)	\$9,000
Deemed re-acquisition consideration as at 30 June 1992 ($\$9,000$ [unindexed] - $\$1,000$)	\$8,000
Therefore reduced cost base as at 1 July 1992	\$8,000

A capital loss will arise if the sale price is less than \$8,000.

There will be no capital gains implications if the sale price is more than \$7,999 and less than \$8,465.

Commissioner of Taxation

3/6/93

FOI INDEX DETAIL: Reference No.

Related Determinations: TD 93/D132; TD 93/D133

Subject Ref: Capital gains; Unit trust distributions

Legislative Ref: ITAA 160ZH; ITAA 160ZM

ATO Ref: (CGTDET 64)

ISSN 1038 - 3158