TD 93/D133 - 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?

This document has been finalised by TD 93/171.

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.

Draft 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/D131.

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 two consequences will follow:-

(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 does not include any "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
3/6/93

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