

TD 94/D96 - Income tax: capital gains: when should an increase be made under subsection 160ZP(14) of the Income Tax Assessment Act 1936 to the cost base, indexed cost base or reduced cost base of shares or debt held in a group company into which a net capital loss is transferred?

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This document has been finalised by TD 94/90.

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Draft Taxation Determination

Income tax: capital gains: when should an increase be made under subsection 160ZP(14) of the *Income Tax Assessment Act 1936* to the cost base, indexed cost base or reduced cost base of shares or debt held in a group company into which a net capital loss is transferred?

1. The increase to the cost base, indexed cost base or reduced cost base of the shares or debt is calculated when the disposal of the shares or debt occurs, but is made with effect from when the loss is transferred.
2. Subsection 160ZP(15) provides that the amount of the increase cannot exceed the increase in the market value of the shares or debt that results from the transfer of the loss. Because the increase to the cost base, indexed cost base or reduced cost base is limited by the amount of the tax benefit which, at the time of disposal, is reflected in the market value of the shares or debt, it is only then that the amount of the increase can be determined. However, the amount of the increase which is determined at that time is deemed to have occurred, for indexation purposes, when the loss is transferred.
3. The explanatory memorandum accompanying Taxation Laws Amendment Bill (No 2) 1994, which introduced subsection 160ZP(14), indicates the purpose of the increase to the cost base, indexed cost base or reduced cost base of shares or debt held in a group company into which a net capital loss is transferred. That purpose is to ensure that on a disposal of shares or debt in the company there is no capital gain attributable to the tax benefit derived from the transferred loss to the extent that the benefit is reflected in the market value at the time of disposal.
4. This interpretation is also consistent with the policy underlying subsection 160ZP(14) as set out in the Assistant Treasurer's press release of 12 January 1994 announcing the amendment.

Example

On 1 March 1994 Company A transfers, for no consideration, a \$100,000 net capital loss to off-set a \$100,000 capital gain derived by Company B, a sister company within a wholly-owned company group. This increases the market value of the shares held in Company B by \$33,000 (the CGT otherwise payable on the capital gain). On 1 June 1994 Company B distributes a dividend of \$11,000 to its holding company, representing one third of the tax saving from the transferred loss. No other dividends are paid. On 1 July 1995, Company A disposes of all the shares in Company B.

Subsection 160ZP(14), in conjunction with subsection 160ZP(15), applies to include an amount of \$22,000, indexed from 1 March 1994, in the indexed cost base of the shares.

Commissioner of Taxation

15/9/94

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