


IT 2571W - Withdrawal - Income tax: application of sections 160AQT and 160AQU to continuously complying Fixed Interest Approved Deposit Funds to which section 290A also applies

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Notice of Withdrawal

Taxation Ruling

Income tax: application of sections 160AQT and 160AQU to continuously complying Fixed Interest Approved Deposit Funds to which section 290A also applies

Taxation Ruling IT 2571 is withdrawn with effect from today.

1. Taxation Ruling IT 2571 explains the application of former sections 160AQT and 160AQY of the *Income Tax Assessment Act 1936* (ITAA 1936) to continuously complying fixed interest approved deposit funds to which section 290A of the ITAA 1936 also applies. Section 290A exempted from tax a proportion of the income of a continuously complying fixed interest approved deposit fund (ADF).
2. The former section 290A was rewritten as section 295-390 of the *Income Tax (Transitional Provisions) Act 1997*. The former section 290A and its replacement have the same defined terms. Some important requirements for the application of the relevant provisions are:
 - the exemption applies to a 'continuously complying fixed interest ADF'. One of the conditions is that the fund is a 'fixed interest complying ADF'. This latter definition has further requirements;
 - the exemption depends on the balances held by eligible depositors. An eligible depositor is:
 - a depositor whose 55th birthday occurred on or before 25 May 1988; or
 - a depositor whose 50th birthday occurred on or before 25 May 1988 and who, on or before that date made a deposit that consisted wholly or partly of the roll-over of an eligible termination payment (ETP), being an ETP that included a concessional component;

- as amounts had to be paid out no later than the person's (depositor's) 65th birthday there is a rather obvious conclusion that should be reached. That conclusion is that all amounts in respect of eligible depositors would have had to be paid out by the income year ended 30 June 2003. That assumes that the ADF did not use a substituted accounting period.

3. In view of the above, there clearly does not seem to have been any real need for the exemption after 1 July 2007. The removal of the compulsory cashing when depositors reached age 65 did not occur until 1 July 2007.

4. As the latest date for an eligible depositor to reach 65 was on 25 May 2003, that is, 15 years after reaching age 50, it seems clear that these eligible depositors would have all been paid out. No exemption can therefore apply even if any of these ADFs still exist.

5. As this ruling has no longer any application, the ruling is withdrawn.

Commissioner of Taxation

7 August 2013

ATO references

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ATOlaw topic: Income Tax ~- Assessable income ~- dividend, interest and royalty income
Project Financing ~- Tax offsets, credits and benefits ~- franking tax offset