



TD 92/116 - Income tax: capital gains: when is the grant of the deemed option in paragraph 160ZZC(12)(a) taken to have occurred?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *16 July 1992*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part 4VAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax : capital gains: when is the grant of the deemed option in paragraph 160ZZC(12)(a) taken to have occurred?

1. Subsection 160ZZC(12) of the *Income Tax Assessment Act 1936* applies if a deposit of money or other consideration:
 - . has been made in respect of a prospective purchase or other transaction, and the purchase or the other transaction is cancelled or otherwise abandoned; and
 - . the deposit is forfeited.

2. When the deposit is forfeited, paragraph 160ZZC(12)(a) deems the deposit to have been paid or given as consideration in respect of the grant, by the person who received the benefit of the forfeiture, of an option that bound the grantor to dispose of an asset and was not exercised. Thus, there is a disposal of the deemed option when the grant of the option took effect by virtue of paragraph 160ZZC(3)(a).

3. The grant of the deemed option is taken to have occurred when the prospective purchase or other transaction was entered into (or made), and not when the cancellation or termination of the prospective purchase or other transaction took place. The grant of the deemed option, in effect, substitutes for the prospective purchase or other transaction in the circumstances outlined in subsection 160ZZC(12).

Example:

A agrees to sell rented property to B on 1/9/91 for \$100,000 with B paying the required \$10,000 deposit to A. B is unable to raise the requisite finance and on 26/9/91, B informs A that , as a result, settlement cannot proceed.

The contract is cancelled and under the agreed terms, A is entitled to retain the deposit. The \$10,000 deposit is taken to be consideration paid or given in respect of a deemed option granted on 1/9/91.

Commissioner of Taxation

16/7/92

FOI INDEX DETAIL: Reference No. I 1212838

Related Determinations: DT 9

Subject Ref: Forfeiture of deposits; prospective purchase or other transactions; option; grant of deemed option

Legislative Ref: ITAA 106ZZC(3)(a); ITAA 160ZZC(12); ITAA 160ZZC(12)(a)

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