TD 92/130 - Income tax: capital gains: does subsection 160ZB(1) exclude from the operation of Part IIIA compensation or damages obtained by a taxpayer for defamation, the loss of support following the (wrongful) death of the taxpayer's spouse or parent or the professional negligence of a solicitor failing to institute a personal injuries action?

This cover sheet is provided for information only. It does not form part of *TD 92/130 - Income tax: capital gains: does subsection 160ZB(1) exclude from the operation of Part IIIA compensation or damages obtained by a taxpayer for defamation, the loss of support following the (wrongful) death of the taxpayer's spouse or parent or the professional negligence of a solicitor failing to institute a personal injuries action?*

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of PartáIVAAA 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 : does subsection 160ZB(1) exclude from the operation of Part IIIA compensation or damages obtained by a taxpayer for defamation, the loss of support following the (wrongful) death of the taxpayer's spouse or parent or the professional negligence of a solicitor failing to institute a personal injuries action?

1. Yes. Compensation or damages received by a taxpayer from any of these legal actions comes within the ambit of subsection 160ZB(1) of the *Income Tax Assessment Act 1936*.

2. Under subsection 160ZB(1), a capital gain is deemed not to have accrued to a taxpayer if that taxpayer receives a sum by way of compensation or damages for any wrong or injury suffered by the taxpayer to his or her person or in his or her profession or vocation.

3. A wrong or injury suffered by a taxpayer to his or her person includes a situation where a taxpayer is defamed. Any compensation or damages however received in respect of that defamation is for the wrong or injury suffered.

4. A dependant taxpayer in a dependancy action seeks compensation for a wrong or injury that he or she has suffered personally following the (wrongful) death of his or her spouse or parent. Personal injury such as nervous shock, loss of companionship and loss of financial support may have been suffered by the dependant. Any resulting compensation or damages is by way of compensation or damages for that injury.

5. A taxpayer may take legal action against a solicitor for the solicitor's negligent failure to institute a personal injuries action on the taxpayer's behalf. This is a right of a personal nature. Damages or compensation obtained from that negligence action relate to sums that would otherwise have been received if the personal injuries action had been successful. The receipts are by way of compensation or damages for the personal injury.

Note: Damages may, in certain circumstances, be taxed as ordinary income.

Commissioner of Taxation
23/07/92

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Subject Ref: capital gains; compensation or damages for personal wrong or injury
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