

# ***TD 93/169 - Income tax: capital gains: when is indexation of the cost base of units in a unit trust available and how is it calculated where a taxpayer has received non assessable distributions in respect of those units?***

! This cover sheet is provided for information only. It does not form part of *TD 93/169 - Income tax: capital gains: when is indexation of the cost base of units in a unit trust available and how is it calculated where a taxpayer has received non assessable distributions in respect of those units?*

! This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

! This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Taxation Determination

### **Income tax: capital gains: when is indexation of the cost base of units in a unit trust available and how is it calculated where a taxpayer has received non assessable distributions in respect of those units?**

1. The standard rule for CGT purposes that indexation is available where a capital gain arises, or where there is neither a capital loss nor a capital gain, on the disposal of an asset still applies. Indexation is not available where a taxpayer seeks to claim a capital loss on the disposal. However, the general rules for calculating the indexed cost base or the reduced cost base of the units are modified where non assessable distributions have been received.
2. The provisions which allow for the calculation of gains or losses in these circumstances are included in section 160ZM of the *Income Tax Assessment Act 1936*.
3. Apart from the operation of subsection 160ZM(3) (see TD 93/171), a capital gain or capital loss will only arise on the actual disposal of the units. In order to ascertain whether any such gain or loss has arisen, subsection 160ZM(2) deems the units to have been disposed of and immediately re-acquired each time a non assessable distribution is received. The reason for deeming disposal and re-acquisition is to enable the cost base of the units to be adjusted each time a non assessable unit trust distribution is received.
4. Paragraph 160ZM(2)(a) is used to determine whether there has been a capital gain on an eventual disposal. Indexation is used in this calculation.
5. Paragraph 160ZM(2)(b) is used to determine whether there has been a capital loss on an eventual disposal. Indexation is not applicable under this provision as a capital loss is determined having regard to the reduced cost base of the units.

*Example:*

*Units acquired on 28 June 1990 for \$10,000*

*Units sold on 1 July 1992*

<i>Non assessable distributions received</i>	<i>30 June 1991</i>	<i>\$1,000</i>
	<i>30 June 1992</i>	<i>\$1,000</i>

The non assessable distributions are "adjusted payments" as defined in subsection 160ZM(3A).

Relevant indexation factors	30 June 1990	102.5
	30 June 1991	106.0
	30 June 1992	107.3
	30 Sept 1992	107.4

What is the cost base in order to determine whether there has been:

- (i) a capital gain?
- (ii) a capital loss?

(i) To determine whether there has been a capital gain, the following calculation is made under subparagraph 160ZM(2)(a)(i):

Deemed disposal consideration as at 30 June 1991 ( $\$10,000 \times [106.0/102.5]$ )	\$10,340
Less non assessable distribution 30 June 1991	\$ 1,000
Deemed re-acquisition consideration as at 30 June 1991 ( $\$10,340 - \$1,000$ )	\$ 9,340
Deemed disposal consideration as at 30 June 1992 ( $\$9,340 \times [107.3/106.0]$ )	\$ 9,452
Less non assessable distribution 30 June 1992	\$ 1,000
Deemed re-acquisition consideration as at 30 June 1992	\$ 8,452
Therefore indexed cost base as at 1 July 1992 is [ $\$8,452 \times 107.4/107.3$ ]	\$ 8,460

A capital gain will arise if the sale price exceeds \$8,460.

(ii) To determine whether there has been a capital loss, the following calculation is made under subparagraph 160ZM(2)(b)(i):

Deemed re-acquisition consideration as at 30 June 1991 ( $\$10,000$ [unindexed] - $\$1,000$ )	\$9,000
Deemed re-acquisition consideration as at 30 June 1992 ( $\$9,000$ [unindexed] - $\$1,000$ )	\$8,000
Therefore reduced cost base as at 1 July 1992	\$8,000

A capital loss will arise if the sale price is less than \$8,000.

There will be no capital gains implications if the sale price is more than \$7,999 and less than \$8,461.

## Commissioner of Taxation

2/9/93

FOI INDEX DETAIL: Reference No. I 1215991

Previously issued as Draft TD 93/D131

Related Determinations: TD 93/170; TD 93/171

Subject Ref: Capital gains; unit trust distributions

Legislative Ref: ITAA 160ZM; ITAA 160ZM(2); ITAA 160ZM(2)(a); ITAA 160ZM(2)(b); ITAA 160ZM(3);  
ITAA 160ZM(3A)

ATO Ref: AUD CASS (CGTDET 64)

ISSN 1038 - 8982