TD 93/178 - Income tax: capital gains: in the case of an involuntary disposal of a post-CGT asset that satisfies section 160ZZK, what is the CGT treatment of the 'notional capital gain' that arises where the compensation or insurance proceeds exceed the indexed cost base?

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Australian Taxation Office

Taxation Determination TD 93/178

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: in the case of an involuntary disposal of a post-CGT asset that satisfies section 160ZZK, what is the CGT treatment of the 'notional capital gain' that arises where the compensation or insurance proceeds exceed the indexed cost base?

1. Section 160ZZK of the *Income Tax Assessment Act 1936* is a roll-over provision which potentially provides a deferral of the tax liability, that might otherwise arise on the involuntary disposal of a post-CGT asset, until the disposal of the replacement asset. The extent to which the tax liability is deferred depends on the difference between the amount of the compensation or insurance proceeds and the cost of the replacement asset (subsection 160ZZK(6)).

2. Subsection 160ZZK(6) applies if a capital gain would have accrued to the taxpayer in respect of the involuntary disposal of an asset if not for the rollover provided in section 160ZZK. For the purposes of subsection 160ZZK(6), the "notional capital gain" refers to the amount that but for section 160ZZK, would have been a capital gain on the disposal of the post-CGT asset. This "notional capital gain" is calculated by subtracting the indexed cost base of the post-CGT asset from the compensation or insurance proceeds received.

3. (a) If the compensation or insurance proceeds is less than the cost of the replacement asset, the cost of the replacement asset is reduced by the notional capital gain - paragraph 160ZZK(6)(a). *See example 1*.

(b) If the compensation or insurance proceeds is more than the cost of the replacement asset, and

(i) the notional capital gain is more than that excess, the excess is treated as a capital gain and the cost of the replacement asset is reduced by the balance of the notional capital gain - subparagraph 160ZZK(6)(b)(i). *See example 2*; or

(ii) the notional capital gain is less than that excess, the notional capital gain is treated as a capital gain - subparagraph 160ZZK(6)(b)(ii). *See example 3*.

Description	*Example 1*	*Example 2*	*Example 3*
(a) Indexed cost base of original asset	*$100,000*	*$100,000*	*$100,000*
(b) Compensation or insurance proceeds	*$120,000*	*$120,000*	*$120,000*
(c) Cost of replacement asset	*$130,000*	*$110,000*	*$90,000*
(d) Notional Capital gain {(b)-(a)}	*$20,000*	*$20,000*	*$20,000*
(e) Capital gain	*Nil*	*$10,000 {(b)-(c)}*	*$20,000 (d)*
(f) Reduction to cost of replacement asset	*$20,000 (d)*	*$10,000*	*Nil {(d)-((b)-(c))}*

[Note: In practical terms, the notional capital gain is used to reduce the cost of the replacement asset to the level of the indexed cost base of the original asset. Any balance is treated as a capital gain.]

Commissioner of Taxation
9/9/93

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