


# ***TD 94/31A - Addendum - Income tax: capital gains: what is meant by the term 'original beneficial owner' as used in subsection 160ZZI(3) of the Income Tax Assessment Act 1936 ?***

 This cover sheet is provided for information only. It does not form part of *TD 94/31A - Addendum - Income tax: capital gains: what is meant by the term 'original beneficial owner' as used in subsection 160ZZI(3) of the Income Tax Assessment Act 1936 ?*

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## Addendum

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### Taxation Determination

Income tax: capital gains: what is meant by the term 'original beneficial owner' as used in subsection 160ZZI(3) of the *Income Tax Assessment Act 1936*?

This Addendum amends Taxation Determination TD 94/31 to remove the reference to bare trust as being the test for determining whether a beneficiary is absolutely entitled to an asset of a trust for CGT purposes. The circumstances in which a beneficiary will be considered absolutely entitled to a CGT asset of a trust are now dealt with in Taxation Ruling TR 2004/D25. In particular, that Ruling states that bare trust is not the test for absolute entitlement.

#### **TD 94/31 is amended as follows:**

1. Delete note (i) and substitute 'Where a beneficiary of a trust is absolutely entitled as against the trustee to any of the rights, or any interest in any of the rights under the policy, the beneficiary (and not the trustee) will be the relevant taxpayer for CGT purposes in respect of the disposal of such rights, or an interest in any of the rights.'

This Addendum applies on and from 15 December 2004.

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**Commissioner of Taxation**

15 December 2004

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ATO references

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