

TD 95/22 - Income tax: capital gains: forfeited deposits: when is an option, that is deemed by paragraph 160ZZC(12)(a) of the Income Tax Assessment Act 1936 to have been granted, disposed of in terms of paragraph 160ZZC(3)(a)?

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *18 May 1995*

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: forfeited deposits: when is an option, that is deemed by paragraph 160ZZC(12)(a) of the *Income Tax Assessment Act 1936* to have been granted, disposed of in terms of paragraph 160ZZC(3)(a)?

Answer:

1. The option is disposed of in terms of paragraph 160ZZC(3)(a) at the time of the forfeiture of the deposit. A capital gain accrues to the grantor (i.e. the person who received the benefit of the forfeiture) in the year in which the deposit is forfeited.

Reasons:

2. Subsection 160ZZC(12) applies if a deposit of money or other consideration:

- (a) was made in respect of 'a prospective purchase or other transaction' which is cancelled or otherwise abandoned; and
- (b) the deposit is forfeited.

3. 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...of an option that bound the grantor to dispose of an asset and was not exercised'. A paragraph 160ZZC(12)(a) option is an asset in accordance with subparagraph (a)(i) of the definition of 'asset' in section 160A.

4. By paragraph 160ZZC(3)(a), the grant of a paragraph 160ZZC(12)(a) option is deemed to have constituted the disposal of that option when the grant took effect.

5. The grant of a paragraph 160ZZC(12)(a) option takes effect when the deposit is forfeited: *Case 32/94* 94 ATC 298; *AAT Case 9538* 28 ATC 1230. A forfeited deposit will therefore give rise to a capital gain or capital loss to the grantor in the year in which the deposit is forfeited.

6. This Taxation Determination overrules Taxation Determination TD 92/116 in which we took the view that the grant of a paragraph 160ZZC(12)(a) option takes effect when the prospective

purchase or other transaction was entered into. Taxation Determination TD 92/116 is now withdrawn. We now agree with the conclusions reached by the Administrative Appeals Tribunal in Case 32/94; AAT Case 9538.

Date of effect:

7. The view expressed in this Determination is, as a general rule, more favourable to taxpayers than our earlier view expressed in Taxation Determination TD 92/116. However, there are likely to be some taxpayers for whom our earlier view is more favourable.

8. For deposits forfeited **on or before** the date of this Determination, taxpayers have a choice of following either the view expressed in this Determination that the option is disposed of at the time of the forfeiture of the deposit or our earlier view that the option is disposed of when the prospective purchase or other transaction was entered into.

9. For deposits forfeited **after** the date of this Determination, the view expressed in this Determination applies. This is subject to the exception that a public ruling cannot withdraw an inconsistent legally binding private ruling if the year of income to which the private ruling relates has already commenced (see Taxation Determination TD 93/34).

10. 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Example:

Alexandria agrees on 24 February 1994 to sell property to Beatrice for \$326,000 with Beatrice paying the required \$50,000 deposit to Alexandria on 6 March 1994 in accordance with the terms of the contract.

On 7 August 1994, Beatrice tells Alexandria that she cannot proceed and accepts that the deposit paid earlier is forfeited.

The \$50,000 forfeited deposit is taken to be consideration paid or given in respect of the grant by Alexandria of a paragraph 160ZZC(12)(a) option. The grant of the option is deemed by paragraph 160ZZC(3)(a) to be a disposal of the option when the grant took effect. The grant took effect in this case when the deposit was forfeited on 7 August 1994 and gave rise to a capital gain in the 1994-95 income year.

Commissioner of Taxation

18/5/95

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Related Determinations: TD 93/34

Subject Ref: forfeiture of deposit; grant of deemed option; prospective purchase or other transaction

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

Case Ref: Case 32/94 94 ATC 298; Case 9538 (1994) 28 ATR 1230

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