TD 93/D288 - Income tax: capital gains: can a premium constitute "an amount of money or other consideration" paid to acquire rights under or an interest in a policy of life assurance for the purpose of subsection 160ZZI(3) of the Income Tax Assessment Act 1936?

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This document has been finalised by TD 94/34.

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Draft Taxation Determination

Income tax: capital gains: can a premium constitute "an amount of money or other consideration" paid to acquire rights under or an interest in a policy of life assurance for the purpose of subsection 160ZZI(3) of the *Income Tax Assessment Act 1936*?

1. In the context of section 160ZZI, the first premium paid by a policyholder to a life assurance company is taken to be an amount of money paid **in respect of** the acquisition of rights under or an interest in a policy of life assurance (paragraph 160ZH(1)(a)). Completion of the contract between the policyholder and the life assurance company is generally accepted to be subject to the receipt of this first premium.

2. On the other hand, **ongoing** premiums paid by the policyholder or by an assignee do not constitute consideration in respect of the acquisition of the rights under or an interest in such policies but are characterised as capital expenditure either for the purpose of **enhancing the value** of, or **preserving the title** to those rights or interests (paragraphs 160ZH(1)(c) or (d)).

3. Accordingly, where an assignment of rights under or an interest in a policy is made by way of gift (e.g. in a family arrangement), ongoing premiums paid by the assignee (who cannot therefore be an original beneficial owner) will not be taken to be amounts of money paid to acquire those rights or interest so as to deny the exemption provided by subsection 160ZZI(2).

Commissioner of Taxation
16/12/93

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