IT 2361 - Income tax : capital gains : change in the underlying ownership of assets of a public company

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This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING NO. IT 2361

INCOME TAX : CAPITAL GAINS : CHANGE IN THE UNDERLYING OWNERSHIP OF ASSETS OF A PUBLIC COMPANY

F.O.I. EMBARGO: May be released

REF H.O. REF: L86/6889-2 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1208978	CAPITAL GAINS - PUBLIC COMPANIES	160ZZS

OTHER RULINGS ON TOPIC : IT 2340

PREAMBLE Further to Taxation Ruling No. IT 2340 which deals generally with the application of section 160ZZS of the Income Tax Assessment Act 1936 (the Act), consideration has been given to the circumstances in which changes in shareholdings in a public company will be required to be examined in order to determine whether there has been a change of 50 per cent or more in the underlying interests in the assets of the company. It has been suggested that the section should have no application to a public company as long as day to day control of the company remains with the same Board of Directors and the business activities of the company continue unchanged.

2. Section 160ZZS is similar in its terms to other provisions of the Act which apply by reference to continuity of beneficial ownership, in particular section 80A (Losses of Previous Years) and section 82KZJ (Negative Gearing). The provisions call for the Commissioner of Taxation to be satisfied as to, or to consider it reasonable to assume, the continuity of beneficial ownership of assets so as not to invoke the application of anti-avoidance safeguards contained in those provisions. Where the Commissioner is so satisfied under section 160ZZS, the practical consequence is to leave the assets, being assets acquired before 20 September 1985, outside the scope of the tax on capital gains.

3. By leaving scope for the Commissioner to conclude that it is reasonable to assume that there has been the requisite continuity, section 160ZZS recognizes that there can be practical difficulties in identifying with complete accuracy changes in underlying interests. In particular it could present considerable difficulty in the case of companies with large numbers of shareholders where shares are constantly being traded on stock exchanges.

RULING 4. Section 160ZZS will have an effect in relation to public companies corresponding to that of section 80A as it has been administered over many years. That is, normal transactions

in a company's shares on a stock exchange which are not associated with activity in the nature of a take-over or merger, are not required to be examined in applying the test. Major changes in the ownership of shares which occur outside the conduct of normal stock market trading, however, will call for careful examination, in the course of which regard will be paid to changes in shareholdings that have occurred in the course of normal trading on stock exchanges as well as to those related to the events that caused the examination to be made.

5. Section 160ZZS does not require specific reference to changes in personnel on the Board of Directors (or in senior management) or in the nature of the business activities of the company, although such changes could be indicative of ownership changes having taken place. Such events, although open to be taken into account by the Commissioner, would not in themselves have capital gains implications nor does their non-occurrence rule out the application of section 160ZZS.

COMMISSIONER OF TAXATION
18 September 1986