TD 92/149 - Income tax: capital gains: if section 160ZZT applies to a shareholder in respect of the disposal of pre-CGT shares in a private company, how is the deemed capital gain determined?

This document has changed over time. This is a consolidated version of the ruling which was published on *27 August 1992*

Taxation Determination

Income tax: capital gains: if section 160ZZT applies to a shareholder in respect of the disposal of pre-CGT shares in a private company, how is the deemed capital gain determined?

1. The basic purpose of section 160ZZT of the *Income Tax Assessment Act 1936* is to work out the part of the consideration received for the sale of pre-CGT shares which may reasonably be attributed to the notional capital gain on the 'underlying property' of the company i.e. the property acquired by the company on or after 20 September 1985. That part of the consideration will be a deemed capital gain to the taxpayer.

2. The capital gain deemed to have accrued to a taxpayer disposing of pre-CGT shares in a private company is equal to so much of the disposal consideration received for those shares determined in accordance with the following formula:

Interest disposed of by the taxpayer in the 'underlying property' of the company, expressed as a percentage *x* *Notional Capital Gain*

where:

Notional Capital Gain = [value of 'underlying property' *less* indexed cost bases of that property]

3. Notwithstanding this formula, the capital gain deemed to have accrued to the taxpayer will not exceed the consideration received by the taxpayer for the disposal of the pre-CGT shares.

4. Section 160ZZT applies on the basis that the consideration is to be attributed first to the notional capital gain, even if the company has both pre- and post-CGT assets which have increased in value. In effect, a LIFO (last in - first out) type basis applies. If the consideration on disposal of the pre-CGT shares is less than the notional capital gain, the whole of the consideration will be deemed to be a capital gain to the taxpayer.

Notes:

(i) Value of underlying property is *total* value. Liabilities are *not* taken into account.

(ii) Section 160ZZT applies in all circumstances where its conditions are satisfied. It does not matter whether the amount of the consideration for the disposal of the pre-CGT shares is based, for example, on the net asset backing of the shares or on the anticipated income flowing from the shares.

(iii) This Determination applies equally to a pre-CGT interest in a private trust estate.

Example 1:

Company Property	*Cost*	*July 1990 value*	*% of Net Worth*
Post-CGT (ICB $450,000)	*$400,000*	*$600,000*	*80%*
Pre-CGT	*$200,000*	*$650,000*	
		$1,250,000	
Liabilities		*$500,000*	
	Net worth	*$750,000*	

Issued Capital : 500,000 $1 shares. Taxpayer sold 5,000 $1 pre-CGT shares in July 1990 for $7,500.

Indexed cost base (ICB) of the post-CGT property at July 1990 : $450,000.

Company's notional capital gain = $600,000 - $450,000 = $150,000

Interest disposed of by taxpayer in the 'underlying property' = $\frac{\$5,000}{\$500,000}$ *= 1%*

Deemed capital gain = 1% x $150,000

*= **$1,500***

Example 2:

If, in Example 1, the taxpayer sold the 5,000 shares for $10,000, the deemed capital gain remains at $1,500

Example 3:

If, in Example 1, the taxpayer sold the 5,000 shares for $1,250, the deemed capital gain is $1,250.

Commissioner of Taxation
27/08/92

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