

TD 93/D287 - Income tax: capital gains: is exemption under section 160ZZI of the Income Tax Assessment Act 1936 limited to disposal of rights under a policy of assurance that result from those acts, transactions or events listed in subsection 160ZZI(4)?

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This document has been finalised by TD 94/33.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: capital gains: is exemption under section 160ZZI of the *Income Tax Assessment Act 1936* limited to disposal of rights under a policy of assurance that result from those acts, transactions or events listed in subsection 160ZZI(4)?

1. No. Subsection 160ZZI(4) merely clarifies the application of section 160M and does not have the effect of limiting "disposals" for the purpose of section 160ZZI to those listed in subsection 160ZZI(4).

2. Accordingly, the general exemption from CGT provided by subsection 160ZZI(2) is available to:-

- . an original beneficial owner of rights under a policy of life assurance, or to
- . a person who did not acquire the rights or interest in such a policy for money or other consideration,

on any gain or loss realised **either** on a disposal constituted by an act, transaction or event listed in subsection 160ZZI(4) **or** by a change of ownership of rights or interest deemed generally by section 160M to be a disposal.

Example 1:

In July 1987, Mary took out a 10 year endowment life assurance policy with AJAX Insurance. A is the original beneficial owner of the rights under the policy.

In July 1993, Mary surrenders the policy and receives \$5,000 from AJAX Insurance being payment of the surrender value of the policy.

Mary is taken to have disposed of her rights under the policy and is not subject to CGT by virtue of subsection 160ZZI(2).

Note: section 26AH may apply to the amount received by Mary in these circumstances.

Example 2:

In September 1990, Adrian took out a 10 year endowment life assurance policy with AJAX Insurance. Adrian is the original beneficial owner of the rights under the policy.

In December 1992, Adrian assigns the rights under the policy to Brian for \$10,000.

Adrian is taken to have disposed of his rights under the policy and is not subject to CGT by virtue of subsection 160ZZI(2).

Note: Section 26AH may apply to the amount received by Adrian in these circumstances.

Commissioner of Taxation

16/12/93

FOI INDEX DETAIL: Reference No.

Related Determinations: TD 93/284; TD 93/D285; TD 93/D286; TD 93/D288

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