TD 93/238W - Income tax: capital gains: will subsection 160M(7) of the Income Tax Assessment Act 1936 apply where there is an act, transaction or event in relation to an asset and no consideration is received or receivable by reason of that act, transaction or event?

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Notice of Withdrawal

Taxation Determination

Income tax: capital gains: will subsection 160M(7) of the *Income Tax Assessment Act 1936* apply where there is an act, transaction or event in relation to an asset and no consideration is received or receivable by reason of that act, transaction or event?

Taxation Determination TD 93/238 is withdrawn with effect from today.

1. Subsection 160M(7) of the *Income Tax Assessment Act 1936* (ITAA 1936) operated to deem a taxpayer to have disposed of an asset if they received, or were entitled to receive an amount of money or other consideration as a result of an act or transaction taking place in relation to an actual asset that they owned.

2. Taxation Determination TD 93/238 clarified that where no consideration was received the deemed market value consideration rule in subsection 160ZD(2) of the ITAA 1936 did not apply for the purposes of subsection 160M(7) because it was a condition precedent to the operation of that provision that consideration be received.

3. Subsections 160M(7) and 160ZD(2) of the ITAA 1936 were rewritten as sections 104-155 (CGT event H2) and 116-30 of the *Income Tax Assessment Act 1997* (ITAA 1997) respectively.

4. Section 116-25 of the ITAA 1997 clearly provides that section 116-30 is not relevant in working out the capital proceeds from CGT event H2.

5. As the rewritten provisions express the law clearly, the Determination is no longer necessary and is therefore withdrawn.

Commissioner of Taxation
7 July 2004

ATO references
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