


***TD 1999/D50 - Income tax: capital gains: if a non-resident person bequeaths a CGT asset, which does not have the necessary connection with Australia, to a resident beneficiary, does that mean the resident makes a capital gain or capital loss if a CGT event later happens to the asset?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D50 - Income tax: capital gains: if a non-resident person bequeaths a CGT asset, which does not have the necessary connection with Australia, to a resident beneficiary, does that mean the resident makes a capital gain or capital loss if a CGT event later happens to the asset?*

This document has been finalised by TD 2000/6.

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## Draft Taxation Determination

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**Income tax: capital gains: if a non-resident person bequeaths a CGT asset, which does not have the necessary connection with Australia, to a resident beneficiary, does that mean the resident makes a capital gain or capital loss if a CGT event later happens to the asset?**

### Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final TDs represent authoritative statements by the ATO.

1. Yes. If a CGT event later happens to the CGT asset, it is not relevant to the resident beneficiary that the asset, while it was in the hands of the non-resident person, lacked a necessary connection with Australia. From a resident's perspective, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* ('the 1997 Act') apply to CGT events which happen to a CGT asset, whether situated in Australia or elsewhere or not situated anywhere (Division 104 of the 1997 Act).
2. The resident beneficiary is taken to have acquired the CGT asset in accordance with subsection 128-15(2) of the 1997 Act. Parts 3-1 and 3-3 of the 1997 Act will apply to any later CGT event which happens to the CGT asset in the hands of the beneficiary.

### Example 1

3. Before 20 September 1985, Gunther, a non-resident, purchased 1,000 shares (representing 2% of the share capital) in ABC Ltd (an Australian public company) for \$1,000. Gunther died on 21 March 1999, leaving the shares in ABC Ltd to an Australian resident beneficiary. At that time the market value of the shares was \$16,000.

- (i) The shares when held by Gunther are not CGT assets that have the necessary connection with Australia.
- (ii) Section 128-15 of the 1997 Act applies to the shares in the hands of the resident beneficiary.
- (iii) The date of acquisition and cost base of the shares for the resident beneficiary are calculated in accordance with section 128-15 of the 1997 Act so that:
  - the shares are deemed to have been acquired by the beneficiary on the date of Gunther's death (21 March 1999); and

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- *for an acquisition cost equal to the market value of the shares as determined at the date of Gunther's death, i.e., \$16,000.*

## **Example 2**

4. *Assume that the facts in Example 1 are unchanged, except that Gunther acquired the shares on 21 January 1990 for \$5,000. Again, the shares held by Gunther are not CGT assets which have the necessary connection with Australia, but section 128-15 of the 1997 Act applies to the shares in the hands of the resident beneficiary.*

5. *The date of acquisition and cost base of the shares for the resident beneficiary are calculated in accordance with section 128-15 of the 1997 Act so that:*

- *the shares are deemed to have been acquired by the beneficiary on the date of Gunther's death (21 March 1999); and*
- *for an acquisition cost equal to the amount that would have been the cost base or reduced cost base (depending on which is applicable on a later CGT event happening in the hands of the beneficiary) of the asset on the day Gunther died.*

## **Note:**

6. This Taxation Determination rewrites and replaces Taxation Determination TD 95/46. There is no material change in this Taxation Determination to the views expressed in TD 95/46 apart from updating it with the rewritten income tax law in the 1997 Act.

7. Parts 3-1 and 3-3, Division 104 and sections 128-15 and 136-25 of the 1997 Act, to which this Determination refers, express the same ideas, respectively, as Parts III, sections 160L, 160T and 160X subsection 160X(6) and paragraphs 160X(5)(a) and 160X(5)(b) of the *Income Tax Assessment Act 1936*.

## **Your comments**

**We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.**

**Comments by Date: 1 September 1999**  
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**Commissioner of Taxation**  
4 August 1999

*Previously issued as:*

TD 95/46

*Related Rulings/Determinations:*

*Subject references:*

CGT asset having the necessary connection with Australia; CGT event; cost base; date of acquisition; effect of death; deceased estates; non-resident; resident

*Legislative references:*

ITAA 1997 Part 3-1; Part 3-3; Division 104; Section 128-15; Section 136-25

ITAA 1936 Part IIIA; Section 160L; Section 160X; Paragraph 160X(5)(a); Paragraph 160X(5)(b); Subsection 160X(6); Section 160T

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ATO references:

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