

TD 93/D289 - Income tax: capital gains : can a taxpayer, in calculating the capital gain on disposal of an asset bequeathed to the taxpayer from an estate, receive the benefit of indexation in determining :(i) the deemed consideration on acquisition; and (ii) the cost base or indexed cost base on disposal where the taxpayer disposes of the asset within 12 months of the taxpayer's acquisition?

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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 : can a taxpayer, in calculating the capital gain on disposal of an asset bequeathed to the taxpayer from an estate, receive the benefit of indexation in determining :

(i) the deemed consideration on acquisition; and

(ii) the cost base or indexed cost base on disposal

where the taxpayer disposes of the asset within 12 months of the taxpayer's acquisition ?

1. Yes. The taxpayer can receive the benefit of indexation only if the time of disposal of the asset by the taxpayer occurs at least 12 months after the time of the original acquisition of the asset by the deceased (assuming the asset was acquired by the deceased post-19 September 1985).

Deemed consideration on acquisition

2. Subparagraph 160X(5)(b)(i) states that the deemed consideration on acquisition by the taxpayer will equal the amount that would have been the indexed cost base to the deceased of the asset for the purposes of Part IIIA if the deceased person had disposed of the asset immediately before his or her death.

3. Subsection 160X(6) stipulates that the cost base rather than the indexed cost base is used to determine the deemed consideration on acquisition where the taxpayer disposes of the asset within 12 months of the time of the original acquisition by the deceased. As a consequence, it is not necessary to refer to subsection 160Z(3) as subsection 160X(6) effectively overrides it.

Cost base or indexed cost base upon disposal

4. For the purposes of section 160Z (determining whether to use the cost base or indexed cost base) the taxpayer is deemed to have acquired the asset at the time the asset was acquired by the deceased.

5. Consequently, a taxpayer can index his/her cost base (the deemed consideration) upon the subsequent disposal of the asset where the asset is disposed of within 12 months of acquisition i.e. the date of death of the deceased (subsection 160Z(4)). Indexation will not be available where the taxpayer disposes of the asset within 12 months of the time of acquisition by the deceased.

6. The practical effect of the application of these provisions (subparagraph 160X(5)(b)(i) and subsection 160Z(4)), is that a taxpayer can receive the benefit of indexation from the time of the original acquisition by the deceased except where the asset is disposed of by the taxpayer within 12 months of that time of acquisition i.e. by the deceased (subsection 160X(6)).

Example 1

<i>1 February 91</i>	<i>31 August 91</i>	<i>30 January 92</i>
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<i>Asset acquired by A for \$1,000,000</i>	<i>A dies and bequeaths Asset to Z</i>	<i>Asset disposed of by Z for \$2,000,000</i>

On disposal of the asset on 30 January 92, the taxpayer does not receive any benefit of indexation in determining the deemed consideration on acquisition and the cost base on disposal. This is because the time of disposal by the taxpayer occurs within 12 months of the time of the original acquisition by the deceased. Consequently, the taxpayer would be assessable on the capital gain of \$1,000,000.

Example 2

<i>1 February 91</i>	<i>31 August 91</i>	<i>30 March 92</i>
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<i>Asset acquired by A for \$1,000,000</i>	<i>A dies and bequeaths Asset to Z.</i>	<i>Asset disposed of by Z for \$2,000,000</i>

As disposal by the taxpayer occurs more than 12 months after the time of the original acquisition by the deceased, the taxpayer will effectively receive the benefit of indexation from the date the asset was originally acquired by the deceased. Therefore, both the deemed consideration on acquisition and the cost base on disposal will be indexed.

Accordingly, the capital gain resulting from this example will be as follows:

Asset acquired by Z (legal personal representative/Beneficiary) on 31 August 1991 (paragraph 160 X(5)(b)).

Deemed consideration on acquisition by Z: $\$1,000,000 \times \frac{215.7}{214.1} = \$1,007,000$

Indexed cost base on disposal by Z $\$1,007,000 \times \frac{217.7}{215.7} = \$1,016,000$

<i>Consideration on disposal</i>	<i>\$2,000,000</i>
<i>Indexed cost base</i>	<i>\$1,016,000</i>

<i>Capital Gain</i>	<i>\$ 984,000</i>
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Commissioner of Taxation

16/12/93

FOI INDEX DETAIL: Reference No.

Subject Ref: beneficiary; capital gain; consideration; cost base; death; indexed cost base.

Legislative Ref: ITAA 160X(5)(b); ITAA 160X(5)(b)(i); ITAA 160X(6); ITAA 160Z; ITAA 160Z(3); ITAA 160Z(4)

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