


TD 93/D291 - Income tax: capital gains: does section 160X of the Income Tax Assessment Act 1936 apply if a non-resident bequeaths an asset, which in the hands of the non-resident beneficiary is not a taxable Australian asset, to a resident beneficiary?

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This document has been finalised by TD 95/49.

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: does section 160X of the *Income Tax Assessment Act 1936* apply if a non-resident bequeaths an asset, which in the hands of the non-resident beneficiary is not a taxable Australian asset, to a resident beneficiary?

1. Yes. Section 160X applies, in these circumstances, to the asset in the hands of the resident beneficiary to determine the date and cost base of the asset for the resident beneficiary.

Example:

On 1 January 1990, John, a non-resident, purchased 1,000 shares (representing 2% of the issued share capital) in ABC Ltd (an Australian public company) for \$1000.

John died on 21 October 1991 leaving the shares in ABC Ltd to an Australian resident beneficiary.

(i) *The shares when held by John are not taxable Australian assets for the purposes of subsection 160L(2) and section 160T.*

(ii) *Section 160X applies to the shares in the hands of the resident beneficiary.*

(iii) *The date of acquisition and cost base of the shares are calculated in accordance with paragraph 160X(5)(b):-*

- . the shares are deemed to have been acquired by the beneficiary on John's date of death viz. 21 October 1991;*
- . for a consideration equal to the indexed cost base of the asset applying at John's date of death.*

Commissioner of Taxation

16/12/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Subject Ref: acquisition; cost base; deceased; non-resident; taxable Australian asset; capital gains tax

Legislative Ref: ITAA 160L(2); ITAA 160X; ITAA 160X(5)(b)

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