TD 93/D5 - Income tax: capital gains: what are the capital gains tax consequences where a legal personal representative (LPR) purchases an asset to satisfy a general legacy?

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Draft Taxation Determination

Income tax: capital gains: what are the capital gains tax consequences where a legal personal representative (LPR) purchases an asset to satisfy a general legacy?

1. A person may provide in his or her will that property of a general description be left to a specified beneficiary. If the deceased did not own an asset of that description at the time of death, the LPR (after paying the debts and other expenses of the estate) may purchase an asset to satisfy that general legacy.

2. The beneficiary for whom the asset is acquired by the LPR will be absolutely entitled to that asset as against the LPR (section 160V of the *Income Tax Assessment Act 1936*). Accordingly, the asset is taken to have been vested in the beneficiary and the acts of the LPR are taken to be the acts of the beneficiary. The beneficiary will be taken to have acquired the asset at the time it was acquired by the LPR. Costs incurred by the LPR which can be included in the cost base of the asset will be included in the cost base to the beneficiary of the asset.

3. When legal ownership of the asset is transferred from the LPR to the beneficiary, there will not be a disposal of the asset for CGT purposes (subsection 160M(1A)).

Example:

Jane's will leaves a general legacy of 1,000 shares in XYZ Ltd to Bill. As Jane does not own any shares in XYZ Ltd at the time of her death, her executor purchases the shares on 23 April 1992 for $2,500.

Bill is deemed to acquire the shares on 23 April 1992 for an acquisition consideration of $2,500.

Commissioner of Taxation
21/1/93

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