TD 93/36 - 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?

This cover sheet is provided for information only. It does not form part of *TD 93/36 - 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?*

This document has changed over time. This is a consolidated version of the ruling which was published on *21 April 2010*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

*[**Note:** This is a consolidated version of this document. Refer to the Tax Office Legal Database (http://law.ato.gov.au) to check its currency and to view the details of all changes.]*

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 is absolutely entitled to that asset as against the LPR. Accordingly, the acts of the LPR are taken to be the acts of the beneficiary (section 106-50 of the *Income Tax Assessment Act 1997* (ITAA 1997)).[1] The beneficiary is 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 are included in the cost base to the beneficiary of the asset.

3. No CGT event happens when legal ownership of the asset is transferred from the LPR to the beneficiary because section 106-50 effectively treats the beneficiary as having transferred the asset to themselves. That is, section 106-50 treats the transfer to the beneficiary as an act done by the beneficiary'.

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 2008 for $2,500.

Bill is deemed to acquire the shares on 23 April 2008 for an acquisition consideration of $2,500.

Commissioner of Taxation
11/03/93

FOI INDEX DETAIL: Reference No. I 1214325 Previously issued as Draft TD 93/D5
Subject Ref: CGT assets; CGT cost base; CGT deceased estates; CGT events; legal personal representatives; trust beneficiaries

[1] All subsequent legislative references are to the ITAA 1997 unless indicated otherwise.

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