TD 94/79 - Income tax: capital gains: if a post-CGT asset bequeathed to a legal personal representative/beneficiary (LPR/B) is disposed of within 12 months of the LPR/B's acquisition, in which circumstances is indexation available?

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

Taxation Determination **TD 94/79**

Taxation Determination

Income tax: capital gains: if a post-CGT asset bequeathed to a legal personal representative/beneficiary (LPR/B) is disposed of within 12 months of the LPR/B's acquisition, in which circumstances is indexation available?

Disposal after more than 12 months from deceased's acquisition

1. If the LPR/B disposes of the asset *within* 12 months of the LPR/B's acquisition but **after more** than 12 months from when the deceased acquired the asset, the benefits of indexation are available to the LPR/B.

2. In these circumstances, the deemed consideration on acquisition by the LPR/B equals the amount that would have been the **indexed cost base** to the deceased at the date of death (subparagraph 160X(5)(b)(i) of the *Income Tax Assessment Act 1936*).

3. On a later disposal of the asset by the LPR/B, the LPR/B can, by virtue of subsection 160Z(4), index his/her cost base (i.e. the deemed consideration on acquisition). Subsection 160Z(4) alters, in effect, the subsection 160Z(3) reference date, for the purposes of determining whether or not to use the cost base or indexed cost base, to the time the asset was **acquired by the deceased**.

4. The combined effect of subparagraph 160X(5)(b)(i) and subsection 160Z(4) is that the LPR/B can receive the benefits of indexation from the time of the original acquisition of the asset by the deceased.

Disposal within 12 months of deceased's acquisition

5. If the LPR/B disposes of the asset within 12 months of the LPR/B's acquisition and within 12 months of the deceased's acquisition, the LPR/B is denied any benefits of indexation.

6. In these circumstances, the deemed consideration on acquisition by the LPR/B equals the amount that would have been the **cost base** to the deceased at the date of death (subsection 160X(6)).

7. On a later disposal of the asset by the LPR/B, the LPR/B cannot index his/her cost base (i.e. the deemed consideration on acquisition) because, for the purposes of subsection 160Z(3) as altered by subsection 160Z(4), the disposal occurs within 12 months of the deceased's acquisition.

Example 1

1 February 91 *31 August 91* *30 March 92*
|--|---|
Asset acquired by ***A*** *dies and bequeaths* *Asset disposed of*
A *for $1,000,000* *asset to* ***LPR/B*** *by* ***LPR/B*** *for $2,000,000*

As disposal by the LPR/B occurs more than 12 months after the time of the original acquisition by the deceased, the LPR/B effectively receives 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 is indexed. Accordingly, the capital gain resulting from this example is as follows:

Asset acquired by LPR/B on 31 August 1991 (paragraph 160 X(5)(b))

Deemed consideration on acquisition by LPR/B: *$1,000,000 x 1.008[i.e.* $\frac{106.6}{105.8}]$ *= $1,008,000*
(using the 'new series' of index numbers)

Indexed cost base on disposal by LPR/B *$1,008,000 x 1.009 [i.e.* $\frac{107.6}{106.6}]$ *= $1,017,072*

Consideration on disposal	*$2,000,000*
Indexed cost base	*$1,017,072*
Capital Gain	*$ 982,928*

Note: If the 'old series' of indexed numbers is used, the deemed consideration on acquisition by the LPR/B is $1,000,000 x 1.007 [i.e. 215.7/214.1] = $1,007,000. The indexed cost base on disposal by the LPR/B is $1,007,000 x 1.009 [i.e. 217.7/215.7] = $1,016,063. The capital gain is $983,937.

Example 2

1 February 91 *31 August 91* *30 January 92*
|--|---|
Asset acquired by ***A*** *dies and bequeaths* *Asset disposed of*
A *for $1,000,000* *asset to* ***LPR/B*** *by* ***LPR/B*** *for $2,000,000*

On disposal of the asset on 30 January 92, the LPR/B 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 LPR/B occurs within 12 months of the time of the original acquisition by the deceased. Consequently, the LPR/B is assessable on the capital gain of $1,000,000.

Commissioner of Taxation
15/9/94

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