TD 96/18 - Income tax: capital gains: if after 19 September 1985 a person makes a capital improvement to a pre-CGT asset, does subsection 160P(6) of the Income Tax Assessment Act 1936 deem the improvement to be a separate asset on the person's death or on any later disposal by the legal personal representative (LPR) or a beneficiary?

Taxation Determination

Income tax: capital gains: if after 19 September 1985 a person makes a capital improvement to a pre-CGT asset, does subsection 160P(6) of the *Income Tax Assessment Act 1936* deem the improvement to be a separate asset on the person's death or on any later disposal by the legal personal representative (LPR) or a beneficiary?

On the person's death

1.   No. Subsection 160P(6) does not deem the improvement to be a separate asset because the subsection only applies on the disposal of an asset (paragraph 160P(6)(a)) and no disposal occurs by reason of the death of the person (subsection 160X(2)).

On a later disposal by the LPR or beneficiary

2.   Subsection 160P(6) does not apply if the asset is later disposed of by the LPR or a beneficiary. Subsection 160P(6) is concerned with post-CGT improvements to pre-CGT assets. Subsection 160X(5) deems assets that formed part of the estate of a deceased person to have been acquired by the LPR or beneficiary at the date of the person's death. Because the LPR or beneficiary is taken to have acquired the asset post-CGT (on the facts, the person having died after 19 September 1995), subsection 160P(6) cannot apply to a later disposal.

Example 1

Jim purchased a repair shop in 1984. He makes an improvement to which subsection 160P(6) would normally apply. In January 1991 Jim dies, leaving the repair shop to his son, Jim Junior. As no disposal of the repair shop occurs by reason of Jim's death, subsection 160P(6) does not operate to deem the improvement to be a separate asset.

Example 2

After the estate is finalised, Jim Junior sells the repair shop. Subsection 160X(5) deems the shop to have been acquired at the time of Jim's death. Because Jim Junior acquired the repair shop after 19 September 1985, subsection 160P(6) does not apply to the disposal.

For the purpose of calculating a capital gain or loss on a later disposal, Jim Junior is deemed to have acquired the repair shop, including the improvements, at the date of Jim's death for market value at that date (paragraph 160X(5)(a)).

Commissioner of Taxation
15 May 1996