




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?

 This cover sheet is provided for information only. It does not form part of *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?*

 This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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



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).

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

FOI INDEX DETAIL: Reference No. I 1014965

Previously issued as Draft TD 95/D25

Related Determinations: TD 96/19; TD 96/21

Related Rulings:

Subject Ref: beneficiary; composite assets; death; disposal of assets; improvements; legal personal representative

Legislative Ref: ITAA 160P(6); ITAA 160P(6)(a); ITAA 160X(2); ITAA 160X(5); ITAA 160X(5)(a)

Case Ref:

ATO Ref: NAT 95/9366-7; CGT Cell (CGDET115) INB QLD

ISSN 1038 - 8982