TD 93/D6 - Income tax: capital gains: what are the CGT consequences where an asset, which was acquired by a legal personal representative (LPR) after the death of the deceased, passes to a remainderman on the death of a life tenant?

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This document has been finalised by TD 93/35.

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Draft Taxation Determination

Income tax: capital gains: what are the CGT consequences where an asset, which was acquired by a legal personal representative (LPR) after the death of the deceased, passes to a remainderman on the death of a life tenant?

1. As the asset was not owned by the deceased at the time of death, section 160X of the *Income Tax Assessment Act 1936* does not apply - see Draft TD 93/D3.

2. When the asset was acquired by the LPR, the remainderman was not absolutely entitled to the asset because the life tenant continued to have an interest in that asset. Accordingly, section 160V cannot apply to deem the asset to have been acquired by the remainderman.

3. For the purposes of paragraph 160ZX(1)(a), the phrase 'estate of a deceased person', in contrast to the phrase 'a trust that arose upon or resulted from the death of a person' used in paragraph 160ZX(2)(b), is taken to mean the estate of the deceased person while it is being administered by the executor or administrator. It does not include a testamentary trust which may arise after administration of the estate is completed.

4. Before the death of the life tenant (and given that the administration of the estate is complete, at least in respect of that asset), the LPR holds the asset as trustee of a trust which is not the estate of a deceased person within the meaning of paragraph 160ZX(1)(a). On the death of the life tenant, the remainderman will become absolutely entitled to the asset. The LPR will therefore be deemed to have disposed of the asset to the remainderman at the time the remainderman became absolutely entitled.

5. The remainderman, as the capital beneficiary in relation to that asset, will be assessed on any capital gain which accrues to the LPR as a result of the deemed disposal.

Commissioner of Taxation
21/1/93

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