

TD 95/D25 - 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?

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This document has been finalised by TD 96/18.

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Draft 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 1985), 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.

Related Determinations: TD 95/D26; TD 95/D28

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)

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

ISSN 1038 - 8982