TD 93/38W - Income tax: capital gains: does section 160X of the Income Tax Assessment Act 1936 apply to assets acquired by a legal personal representative which were not owned by the deceased at the date of death?

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This document has changed over time. This is a consolidated version of the ruling which was published on *22 June 2005*

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Notice of Withdrawal

Taxation Determination

Income tax: capital gains: does section 160X of the *Income Tax Assessment Act 1936* apply to assets acquired by a legal personal representative which were not owned by the deceased at the date of death?

Taxation Determination TD 93/38 is withdrawn with effect from today.

1. Section 160X of the *Income Tax Assessment Act 1936* (ITAA 1936) contained rules that applied to 'assets that formed part of the estate of a deceased person'.

2. Taxation Determination TD 93/38 clarified that section 160X of the ITAA 1936 applied only to assets owned by an individual when they died and did not extend to assets acquired by the deceased person's legal personal representative.

3. Section 160X of the ITAA 1936 was rewritten as sections 128-10 and 128-15 of the *Income Tax Assessment Act 1997*. The rewritten provisions make it clear that they apply only to assets owned at the date of death. The Explanatory Memorandum to the Tax Law Improvement Bill (No. 1) 1998 notes that this was an intended change to the law.

4. As the rewritten provisions express the law clearly, the Determination is no longer necessary and is therefore withdrawn.

Commissioner of Taxation
22 June 2005

ATO references
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