


***TD 93/D291 - Income tax: capital gains: does section 160X of the Income Tax Assessment Act 1936 apply if a non-resident bequeaths an asset, which in the hands of the non-resident beneficiary is not a taxable Australian asset, to a resident beneficiary?***

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This document has been finalised by TD 95/49.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **Income tax: capital gains: does section 160X of the *Income Tax Assessment Act 1936* apply if a non-resident bequeaths an asset, which in the hands of the non-resident beneficiary is not a taxable Australian asset, to a resident beneficiary?**

1. Yes. Section 160X applies, in these circumstances, to the asset in the hands of the resident beneficiary to determine the date and cost base of the asset for the resident beneficiary.

*Example:*

*On 1 January 1990, John, a non-resident, purchased 1,000 shares (representing 2% of the issued share capital) in ABC Ltd (an Australian public company) for \$1000.*

*John died on 21 October 1991 leaving the shares in ABC Ltd to an Australian resident beneficiary.*

(i) *The shares when held by John are not taxable Australian assets for the purposes of subsection 160L(2) and section 160T.*

(ii) *Section 160X applies to the shares in the hands of the resident beneficiary.*

(iii) *The date of acquisition and cost base of the shares are calculated in accordance with paragraph 160X(5)(b):-*

- . the shares are deemed to have been acquired by the beneficiary on John's date of death viz. 21 October 1991;*
- . for a consideration equal to the indexed cost base of the asset applying at John's date of death.*

**Commissioner of Taxation**

16/12/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Subject Ref: acquisition; cost base; deceased; non-resident; taxable Australian asset; capital gains tax

Legislative Ref: ITAA 160L(2); ITAA 160X; ITAA 160X(5)(b)

ATO Ref: CGTDET97

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