

TD 93/35 - 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 changed over time. This is a consolidated version of the ruling which was published on *11 March 1993*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part 4VAAA 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: 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. The asset is acquired by the LPR, at the time determined under section 160U of the *Income Tax Assessment Act 1936*.

As the asset was not owned by the deceased at the time of death, section 160X does not apply to deem it to have been acquired at the time of the deceased's death - see TD 93/38, TD 93/37, TD 93/36. Nor does section 160V apply to deem the asset to have been acquired by the remainderman. 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.

2. On the death of the life tenant, the LPR (as trustee of a testamentary trust) is deemed to have disposed of the asset to the remainderman.

In 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 elsewhere in Div 6 of Part IIIA, 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.

Prior to the death of the life tenant (and given that the administration of the estate is complete, at least in respect of that asset), the asset is held by a trustee of a trust which is not "the estate of a deceased person". On the death of the life tenant, the remainderman will become absolutely entitled to the asset. Accordingly, subsection 160ZX(1) deems the trustee to have disposed of the asset to the remainderman at the time the remainderman became absolutely entitled.

3. The trustee/LPR is taken to have disposed of the asset for a consideration equal to the market value of the asset at the time of disposal (that is, when the remainderman became absolutely entitled to the asset) - subsection 160ZX(3).

4. The remainderman will be regarded as being presently entitled to, and so generally assessable on, any capital gain which accrues to the trustee/LPR as a result of the deemed disposal.

This is consistent with the ATO practice of assessing any excess of net income over trust accounting income because of a capital gain to the capital beneficiary.

5. The remainderman is taken to have acquired the asset for a consideration equal to the asset's market value at the time he/she became absolutely entitled to it - subsection 160ZX(3).

6. There will generally be no CGT consequences to the remainderman in respect of his/her interest in remainder.

The remainderman is taken to have disposed of his/her interest in remainder in relation to the asset for a consideration equal to the asset's market value at the time he/she became absolutely entitled to it - subsection 160ZX(4). The indexed cost base of that interest will generally also equal the market value of the asset at that time - subsection 160ZX(5). Accordingly, no capital gain or capital loss would accrue.

Example:

Bill died before 20 September 1985 and left his 1,000 shares in ABC Ltd on trust to his wife, Liz, for her life and then to their daughter, Maria. Bill appointed Tom as trustee of the trust.

Exercising a power of sale given to him by Bill's will (and by the various Trusts Acts), Tom sells the shares in ABC Ltd and uses the proceeds of \$10,000 to buy 2,000 shares in XYZ Ltd. He does this on 15 January 1989.

Liz, the life tenant in respect of those shares, dies on 15 July 1990. At that time, the indexed cost base to Tom of those shares was \$11,110 (assuming no incidental costs etc), and their market value was \$12,000. The CGT consequences are:

- 1. Tom acquired the 2,000 shares in XYZ Ltd on 15 January 1989 for \$10,000.*
- 2. Tom disposed of the shares to Maria on 15 July 1990 (the date she becomes absolutely entitled to the shares upon Liz's death).*
- 3. Tom is taken to have disposed of the shares to Maria for a consideration of \$12,000. Tom, as trustee, has a capital gain of \$890.*
- 4. As Maria is the capital beneficiary in respect of those shares, she will be assessed in respect of that gain (assuming she is under no legal disability).*
- 5. Maria is taken to have acquired the shares on 15 July 1990 for a consideration of \$12,000.*
- 6. No CGT consequences flow to Maria from the disposal of her interest in remainder - the indexed cost base and consideration for the disposal of the interest are both taken to be \$12,000.*

Commissioner of Taxation

11/03/93

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