



TD 95/46 - Income tax: capital gains: if a non-resident person bequeaths an asset, which is not a taxable Australian asset, to a resident beneficiary, does that status (i.e., not a taxable Australian asset) carry through to the beneficiary on the death of the non-resident?

 This cover sheet is provided for information only. It does not form part of *TD 95/46 - Income tax: capital gains: if a non-resident person bequeaths an asset, which is not a taxable Australian asset, to a resident beneficiary, does that status (i.e., not a taxable Australian asset) carry through to the beneficiary on the death of the non-resident?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *30 August 1995*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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: if a non-resident person bequeaths an asset, which is not a taxable Australian asset, to a resident beneficiary, does that status (i.e., not a taxable Australian asset) carry through to the beneficiary on the death of the non-resident?

1. No. The phrase 'taxable Australian asset' in section 160T of the *Income Tax Assessment Act 1936* (the Act) is only relevant from the perspective of a non-resident. However, from the resident's perspective, Part IIIA of the Act applies to the disposal of an asset, whether situated in Australia or elsewhere or not situated anywhere (subsection 160L(1)). The phrase 'taxable Australian asset' is not relevant to a resident.

2. The resident beneficiary is taken to have acquired the asset in accordance with subsection 160X(5). Part IIIA will apply to any later disposal of the asset by the beneficiary.

Example 1

Before 20 September 1985, Gunther, a non-resident, purchased 1,000 shares (representing 2% of the issued share capital) in ABC Ltd (an Australian public company) for \$1,000. Gunther died on 21 March 1995, leaving the shares in ABC Ltd to an Australian resident beneficiary. At that time the market value of the shares was \$16,000.

- (i) The shares when held by Gunther are not taxable Australian assets.*
- (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)(a) so that:*
 - the shares are deemed to have been acquired by the beneficiary on Gunther's date of death (21 March 1995); and*
 - for a consideration equal to the market value of the shares as determined at Gunther's date of death, i.e., \$16,000.*

Example 2

Assume that the facts in Example 1 are unchanged, except that Gunther acquired the shares on 21 January 1990 for \$5,000. Again, the shares held by Gunther are not taxable Australian assets, but section 160X applies to the shares in the hands of the resident beneficiary.

The date of acquisition and cost base of the shares are calculated in accordance with paragraph 160X(5)(b) or subsection 160X(6) so that:

- the shares are deemed to have been acquired by the beneficiary on Gunther's date of death (21 March 1995); and*
- for a consideration equal to the amount that would have been the cost base, indexed cost base or reduced cost base (depending on which is applicable on a later disposal by the beneficiary) to Gunther if he had disposed of the shares immediately before his death.*

Commissioner of Taxation

30/8/95

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Related Rulings:

Subject Ref: cost base; date of acquisition; date of death; deceased estates; taxable Australian asset

Legislative Ref: ITAA 160L(1); ITAA 160T; ITAA 160X; ITAA 160X(5)(a); ITAA 160X(5)(b); ITAA 160X(6)

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