TD 93/D3 - 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?

• This cover sheet is provided for information only. It does not form part of *TD* 93/D3 - 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?

This document has been finalised by TD 93/38.

FOI Status: draft only - for comment

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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.

Draft 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?

1. No. The roll-over relief provided by section 160X of the *Income Tax Assessment Act 1936* only applies to assets owned by a person at the time of the death of that person.

2. Section 160X applies where an asset which formed part of the estate of the deceased *passes to* a legal personal representative. In the context of the section, we consider that this refers only to assets owned by the deceased at the time of death.

Commissioner of Taxation 21/1/93

FOI INDEX DETAIL: Reference No. Related Ruling: IT 2664 Related Determinations: TD93/D4; TD93/D5; TD93/D6 Subject Ref: death; deceased estates; legal personal representative; assets Legislative Ref: 160X ATO Ref: 92/1427-5 (CGTDET36)

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