



Taxation Determination

Income tax: capital gains: if a court order in the context of Subdivision 126-A of the *Income Tax Assessment Act 1997* varies or sets aside an earlier order of the court, does the later court order operate retrospectively or prospectively?

Preamble

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

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 settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. The answer depends on the terms of the court order. In the absence of clear words to the contrary, a later court order should be given only prospective application.
2. If:
 - (a) a CGT event involving an individual and their spouse happens because of a court order under the *Family Law Act 1975*;
 - (b) roll-over is provided under section 126-5 or 126-15 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
 - (c) a later court order varies or sets aside the original court order,the later court order operates only prospectively (unless the order otherwise directs).
3. If a later court order sets aside an earlier court order and, as a result, there is a re-transfer of a CGT asset, there is roll-over under section 126-5 or 126-15 of the ITAA 1997 for the re-transfer.

Commissioner of Taxation

3 November 1999

Previous draft:

Previously issued in draft form as TD 1999/D77

Subject references:

CGT asset; CGT event; court order; re-transfer; roll-over; spouse

Legislative references:

ITAA 1997 Subdiv 126-A; ITAA 1997 126-5; ITAA 1997 126-15; FLA

ATO references:

NO 99/19509-6

BO CGT marriage breakdown summit 1999

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