



Taxation Determination

Income tax: capital gains: if section 126-15 of the *Income Tax Assessment Act 1997* applies to a CGT event that has happened involving a company or a trustee, can expenses incurred by the spouse to the marriage breakdown who is not the transferee form part of the cost base of a CGT asset?

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. No. Only expenses satisfying the cost base rules in Division 110 of the *Income Tax Assessment Act 1997* (ITAA 1997) incurred by the transferor - that is, the company or trustee - and the transferee - that is, the spouse to whom the CGT asset is transferred - form part of the cost base of the asset.

2. The cost base rules in Division 110 of the ITAA 1997 require 'you', the asset owner, to incur the costs or expenditure that form part of the cost base. In applying the cost base rules on a transfer of a CGT asset from a company or trustee on a marriage breakdown, there is no scope to include costs or expenditure of any person other than the transferor and transferee. The spouse of the transferee at no time owned the CGT asset and their costs or expenditure do not form part of its cost base.

Note

3. If CGT event A1 (about disposals of CGT assets) or CGT event B1 (about use and enjoyment of a CGT asset before title passes) happens because of a court order under the *Family Law Act 1975* and involves a company or a trustee (the transferor) and a spouse (the transferee), the consequences in section 126-5 apply, including the cost base adjustment in subsection 126-5(5) of the ITAA 1997: see subsection 126-15(1). By subsection 126-5(5), the asset's cost base in the

hands of the transferor at the time the transferee acquires the asset becomes the first element of its cost base in the hands of the transferee.

Commissioner of Taxation

3 November 1999

Previous draft:

Previously issued in draft form as TD 1999/D84

Subject references:

asset; asset owner; CGT asset; CGT event A1; CGT event B1; company; cost base; cost base rules; court order; marriage breakdown; spouse; transferee; transferor; trustee

Legislative references:

ITAA 1997 126-5; ITAA 1997 126-5(5); ITAA 1997 126-15; ITAA 1997 126-15(1); ITAA 1997 Div 110; FLA

ATO references:

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