



Taxation Determination

Income tax: capital gains: if the requirements of section 126-5 or 126-15 of the *Income Tax Assessment Act 1997* are satisfied, is the marriage breakdown roll-over provided by the section automatic?

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. Yes. Both sections 126-5 and 126-15 of the *Income Tax Assessment Act 1997* apply automatically once their requirements are satisfied. The provisions are clearly expressed in this respect and contain no scope for any election to be made. Parties to a marriage breakdown cannot agree not to apply the provisions if the requirements have been satisfied.

Commissioner of Taxation

3 November 1999

Previous draft:

Previously issued in draft form as TD 1999/D86

Subject references:

election; marriage breakdown; spouse; roll-over

Legislative references:

ITAA 1997 126-5; ITAA 1997 126-15

ATO references:

NO 99/19509-6

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