



Taxation Determination

Income tax: capital gains: is the expression ‘a State law, Territory law or foreign law relating to *de facto* marriage breakdowns’ in paragraphs 126-5(1)(c) and 126-15(1)(c) of the *Income Tax Assessment Act 1997* restricted to State, Territory or foreign legislation?

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.
2. The reference to ‘a State law, Territory law or foreign law’ in paragraphs 126-5(1)(c) and 126-15 (1)(c) of the *Income Tax Assessment Act 1997* is confined to statutory law of a State, Territory or foreign country and does not extend to the law generally in a State, Territory or foreign country.
3. The effect of this is that a CGT event which happens because of a court order relating to *de facto* marriage breakdown, only qualifies for roll-over if it happens because of a court order made under the statutory law of a State, Territory or foreign country relating to *de facto* marriage breakdowns.
4. Roll-over is, therefore, only available in those States, Territories and foreign countries that have made specific legislative provision for *de facto* marriage breakdowns.
5. This construction is supported by the fact that paragraphs 126-5(1)(c) and 126-15 (1)(c) refer to ‘a’ State law, Territory law or foreign law and do not refer to ‘the’ law of a State, Territory or foreign country. Under subsection 995-1(1), except so far as a contrary intention appears, ‘State law’ means ‘a law of a State’, ‘Territory law’ means ‘a law of a Territory’ and ‘foreign law’ means ‘a law of a foreign country’. It is also supported by the explanatory memorandum to the Taxation Laws Amendment Bill (No 2) 1992 which states that roll-over will extend to ‘the transfer of assets

on the breakdown of de facto marriages where a State, Territory or foreign country has legislated to allow the court to order such a transfer’.

Commissioner of Taxation

3 November 1999

Previous draft:

Previously issued in draft form as TD 1999/D87

Subject references:

de facto marriage breakdown; foreign law; roll-over; State law; Territory law

Legislative references:

ITAA 1997 126-5(1)(c); ITAA 1997 126-15(1)(c); ITAA 1997 995-1(1)

ATO references:

NO 99/19509-6

BO CGT marriage breakdown summit 1999

FOI Index Detail: I 1020824

ISSN: 1038 - 8982