


***TD 1999/D77 - 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?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D77 - 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?*

This document has been finalised by TD 1999/51.

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## Draft Taxation Determination

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### **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**

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

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.

#### **Your comments**

4. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

|                   |                         |
|-------------------|-------------------------|
| Comments by date: | 15 September 1999       |
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## Commissioner of Taxation

18 August 1999

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### *Subject references:*

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

### *Legislative references:*

ITAA 1997 126-5; ITAA 1997 126-15; ITAA 1997 Subdiv 126-A; FLA 1975

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### ATO references:

NO 99/19509-6

BO CGT marriage breakdown summit 1999

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