



TD 96/19 - Income tax: capital gains: if a person (A): improves a pre-CGT asset to which subsection 108-70(2) of the Income Tax Assessment Act 1997 applies; and disposes of the improved asset to A's spouse (B) under an order of the Court under the Family Law Act 1975 following marriage breakdown how does section 126-5 of that Act apply:(i) to the disposal of the improved asset by A; and (ii) to any later disposal of the improved asset by B?

 This cover sheet is provided for information only. It does not form part of *TD 96/19 - Income tax: capital gains: if a person (A): improves a pre-CGT asset to which subsection 108-70(2) of the Income Tax Assessment Act 1997 applies; and disposes of the improved asset to A's spouse (B) under an order of the Court under the Family Law Act 1975 following marriage breakdown how does section 126-5 of that Act apply:(i) to the disposal of the improved asset by A; and (ii) to any later disposal of the improved asset by B?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 19 May 2010

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Taxation Determination

Income tax: capital gains: if a person (A):

- **improves a pre-CGT asset to which subsection 108-70(2) of the *Income Tax Assessment Act 1997* applies; and**
- **disposes of the improved asset to A's spouse (B) under an order of the Court under the *Family Law Act 1975* following marriage breakdown,**

how does section 126-5 of that Act apply:

- (i) to the disposal of the improved asset by A; and**
- (ii) to any later disposal of the improved asset by B?**

Disposal by the person

1. Under subsection 108-70(2) of the *Income Tax Assessment Act 1997* (ITAA 1997),¹ the disposal of the improved asset by A to B is taken to be a disposal of two separate assets. For the purposes of subsection 126-5(1), the disposal of each asset is 'because of' a court order under the *Family Law Act 1975*.
2. Any capital gain or capital loss made by A on the disposal of each asset to B is disregarded under subsection 126-5(4).

Later disposal by the person's spouse

3. In B's hands, the asset which has been improved retains its pre-CGT status under subsection 126-5(6) and the improvement retains its post-CGT status under subsection 126-5(5).
4. Any capital gain or capital loss made by B on the disposal of the pre-CGT asset is disregarded (assuming that B does not further improve it): paragraph 104-10(5)(a).

¹ All legislative references in this Determination are to the ITAA 1997 unless indicated otherwise.

5. There may be CGT consequences on the disposal of the improvement. Subsection 126-5(5) provides that the cost base of the improvement includes the cost base, or reduced cost base ('relevant cost base') as applicable to A at the time of A's disposal to B. Whether a capital gain or capital loss arises on a disposal by B depends on whether or not the disposal consideration exceeds the relevant cost base.

6. [Omitted.]

Example 1

7. *Al acquires an asset in 1983. In 2007 he makes significant capital improvements, in terms of subsection 108-70(2), to the asset. Following the breakdown of his marriage, he transfers the asset to his former spouse, Peggy, to comply with an order of the Court under the Family Law Act 1975.*

8. *What are the tax consequences? Any capital gain or capital loss made by Al on transferring the asset to Peggy is disregarded. Peggy acquires a pre-CGT asset and a post-CGT improvement. Peggy is deemed to have paid an amount equal to Al's relevant cost base as consideration for the improvement. In effect, Peggy is in the same position as Al, had he retained the assets.*

Example 2

9. *Peggy sells the asset and the improvement to Bud in 2008. What are the tax consequences? Any capital gain or capital loss made by Peggy on the sale of the pre-CGT asset is disregarded. Peggy calculates her capital gain or capital loss in respect of the sale of the post-CGT improvement by reference to the relevant cost base or reduced cost base of the improvement.*

Technical note

10. *In determining whether the threshold test in paragraph 108-70(2)(b) is met when an asset is disposed of because of an order of the Family Court, it is acceptable to regard the market value of the asset as the capital proceeds from the event. Note that this Taxation Determination does not consider whether the time of disposal is the date of the Court Order, the date of transfer or some other time.*

Commissioner of Taxation

15 May 1996

FOI INDEX DETAIL: Reference No. I 1014970

Previously issued as Draft TD 95/D26

Related Determinations: TD 96/18; TD 96/21

Related Rulings:

Subject Ref: CGT assets; CGT composite assets; CGT cost base; CGT events; CGT marriage breakdown; CGT relationship breakdown; CGT roll-over relief; CGT same asset roll-over; CGT separate assets; disposal of assets; pre-CGT assets

Legislative Ref: ITAA 1997; ITAA 1997 104-10(5)(a); ITAA 1997 108-70(2); ITAA 1997 108-70(2)(b); ITAA 1997 126-5; ITAA 1997 126-5(4); ITAA 1997 126-5(5); ITAA 1997 126-5(6)

Case Ref:

ATO Ref: NAT 95/9367-5; CGT Cell (CGTDET116) INB

ISSN 1038 - 8982