



***TD 42 - Capital Gains: Will section 160ZZS apply where pre-CGT shares in a company are transferred to a spouse and the shares are eligible for roll-over relief under section 160ZZM?***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *5 March 1992*

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

## CGT Determination Number 42

**Capital Gains: Will section 160ZZS apply where pre-CGT shares in a company are transferred to a spouse and the shares are eligible for roll-over relief under section 160ZZM?**

### Determination

1. Roll-over relief is available to a spouse in respect of assets transferred pursuant to an order of (or section 87 maintenance agreement approved by) a Court under the Family Law Act 1975 or under a corresponding law of a foreign country (section 160ZZM).
2. Where section 160ZZM applies and the assets transferred are shares in a company which were acquired before 20 September 1985, the spouse is deemed to have acquired the shares before 20 September 1985 (paragraph 160ZZM(1)(c)).
3. The transfer of the shares may affect the majority underlying interests in the assets of the company. However, because section 160ZZM deems the spouse to have acquired the shares before 20 September 1985, the Commissioner will also consider that the spouse held those interests in the company before 20 September 1985 for the purpose of applying section 160ZZS.

COMMISSIONER OF TAXATION

5 March 1992

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