


TD 1999/D84 - Income tax: capital gains: if section 126-15 of the Income Tax Assessment Act 1997 applies to a CGT event that has happened involving a company or a trustee, can expenses incurred by both spouses to the marriage breakdown form part of the cost base of a CGT asset?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D84 - Income tax: capital gains: if section 126-15 of the Income Tax Assessment Act 1997 applies to a CGT event that has happened involving a company or a trustee, can expenses incurred by both spouses to the marriage breakdown form part of the cost base of a CGT asset?*

This document has been finalised by TD 1999/58.



Draft Taxation Determination

Income tax: capital gains: if section 126-15 of the *Income Tax Assessment Act 1997* applies to a CGT event that has happened involving a company or a trustee, can expenses incurred by both spouses to the marriage breakdown form part of the cost base of a CGT asset?

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. No. Only expenses satisfying the cost base rules in Division 110 of the *Income Tax Assessment Act 1997* (ITAA 1997) incurred by the transferor - that is, the company or trustee - and the transferee - that is, the spouse to whom the CGT asset is transferred - form part of the cost base of the asset.

2. The cost base rules in Division 110 of the ITAA 1997 require 'you', the asset owner, to incur the costs or expenditure that form part of the cost base. In applying the cost base rules on a transfer of a CGT asset from a company or trustee on a marriage breakdown, there is no scope to include costs or expenditure of any person other than the transferor and transferee. The spouse of the transferee at no time owned the CGT asset and their costs or expenditure do not form part of its cost base.

Note

3. If CGT event A1 (about disposals of CGT assets) or CGT event B1 (about use and enjoyment of a CGT asset before title passes) happens because of a court order under the *Family Law Act 1975* and involves a company or a trustee (the transferor) and a spouse (the transferee), the consequences in section 126-5 apply, including the cost base adjustment in subsection 126-5(5) of the ITAA 1997: see subsection 126-15(1). By subsection 126-5(5), the asset's cost base in the hands of the transferor at the time the transferee acquires the asset becomes the first element of its cost base in the hands of the transferee.

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

Subject references:

asset; asset owner; CGT asset; CGT event A1; CGT event B1; company; cost base; cost base rules; court order; marriage breakdown; spouse; transferee; transferor; trustee

Legislative references:

ITAA 1997 126-5; ITAA 1997 126-5(5); ITAA 1997 126-15; ITAA 1997 126-15(1); ITAA 1997 Div 110; FLA 1975

ATO references:

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