


TD 1999/D87 - 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?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D87 - 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?*

This document has been finalised by TD 1999/61.

Draft 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

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. 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’.

Your comments

6. 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:

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

ATO references:

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