


# ***IT 122 - Section 26AAA - disposal of property under matrimonial settlement***

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TAXATION RULING NO. IT 122

SECTION 26AAA - DISPOSAL OF PROPERTY UNDER MATRIMONIAL SETTLEMENT

F.O.I. EMBARGO: May be released

REF

H.O. REF: J.153/117/113 P3 F224 DATE OF EFFECT:

B.O. REF: DATE ORIG. MEMO ISSUED: 13.11.80

F.O.I. INDEX DETAIL

REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

I 1100698 PROPERTY SOLD IN 26AAA(1)(f)  
12 MONTHS  
TRANSFER OF PROPERTY  
MARRIAGE SETTLEMENT

OTHER RULING ON TOPIC IT 183

FACTS

Consideration has been given to the possible application of Section 26AAA to any profit arising from the sale of property in the following circumstances.

2. Two taxpayers, a husband and his wife, had jointly owned two properties for a number of years. One property was the matrimonial home and the other was a holiday house at the seaside.

3. Following dissolution of their marriage, a Deed of Settlement was executed whereby, inter alia, the wife agreed to transfer to her husband all of her right, title and interest in the matrimonial home. Contemporaneously, the husband agreed to transfer to her all of his right, title and interest in the seaside house. In addition, the wife agreed to pay a cash settlement to him within 14 days of approval of the Deed by the Family Court.

4. For personal and financial reasons, the wife wished to dispose of the seaside house within twelve months of the above transfer and an opinion was sought as to whether the profit, if any, on disposal would be treated as assessable income.

RULING

5. It was considered that the wife did not "purchase" her former husband's interest in the property as ordinarily understood or in terms of the deeming provisions of Section 26AAA(1)(f). The effect of the marriage settlement approved by the court under Section 87 of the Family Law Act 1975 was a division of property rather than an exchange.

6. In the circumstances it was considered that if the wife were to sell the property within twelve months from the date on which she acquired her former husband's interest, any profit arising from the sale would not be assessable income under Section 26AAA.

COMMISSIONER OF TAXATION