


***TD 1999/57 - Income tax: capital gains: if marriage breakdown roll-over applies to a transfer of a CGT asset between spouses, what expenses of the transferor become the first element of the transferee's cost base of the asset under paragraph 126-5(5)(a) of the Income Tax Assessment Act 1997?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/57 - Income tax: capital gains: if marriage breakdown roll-over applies to a transfer of a CGT asset between spouses, what expenses of the transferor become the first element of the transferee's cost base of the asset under paragraph 126-5(5)(a) of the Income Tax Assessment Act 1997?*



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## Taxation Determination

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### **Income tax: capital gains: if marriage breakdown roll-over applies to a transfer of a CGT asset between spouses, what expenses of the transferor become the first element of the transferee's cost base of the asset under paragraph 126-5(5)(a) of the *Income Tax Assessment Act 1997*?**

#### ***Preamble***

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

#### ***Date of effect***

*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 settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).*

1. Costs of transfer (conveyancing fees, stamp duty, etc.) of a CGT asset transferred between spouses because of a court order under the *Family Law Act 1975* are included in the cost base of the transferor (paragraph 110-25(3)(b)) which, by subsection 126-5(5), becomes the first element of the transferee's cost base.
2. The transferor's general legal costs of the marriage breakdown property settlement do not satisfy the cost base rules in Division 110 of the *Income Tax Assessment Act 1997* (ITAA 1997).

#### **Note**

3. Under subsection 126-5(5) of the ITAA 1997, if a CGT asset is transferred between spouses because of a court order under the *Family Law Act 1975*, the first element of the asset's cost base in the hands of the transferee is the asset's cost base in the hands of the transferor at the time the transferee acquired it. The first element of the asset's reduced cost base (if applicable) is calculated similarly.

**Commissioner of Taxation**

3 November 1999

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*Previous draft:*

Previously issued in draft form as TD 1999/D83

*Subject references:*

asset; CGT asset; CGT event; cost base; first element; marriage breakdown; property; property settlement; reduced cost base; spouse; roll-over; transfer; transferee; transferor

*Legislative references:*

ITAA 1997 Div 110; ITAA 1997 110-25(3)(b); ITAA 1997 126-5(5); ITAA 1997 126-5(5)(a)

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ATO references:

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