


***TD 96/19A1 - Addendum - Income tax: capital gains: if a person (A): improves a pre-CGT asset to which subsection 160P(6) applies; and disposes of the improved asset to A's spouse (B) under an order of the Court under the Family Law Act 1975 following marriage breakdown, how does section 160ZZM apply:(i) to the disposal of the improved asset by A; and (ii) to any later disposal of the improved asset by B?***

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## Addendum

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### Taxation Determination

Income tax: capital gains: if a person (A):

- improves a pre-CGT asset to which subsection 160P(6) applies; and
- disposes of the improved asset to A's spouse (B) under an order of the Court under the *Family Law Act 1975* following marriage breakdown,

how does section 160ZZM apply:

- (i) to the disposal of the improved asset by A; and
- (ii) to any later disposal of the improved asset by B?

This Addendum amends Taxation Determination TD 96/19 to reflect the rewritten capital gains tax provisions in Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*.

**TD 96/19 is amended as follows:**

**1. Title**

- (a) Omit 'subsection 160P(6)'; substitute 'subsection 108-70(2) of the *Income Tax Assessment Act 1997*'.
- (b) Omit 'section 160ZZM'; substitute 'section 126-5 of that Act'.

## 2. Paragraphs 1 and 2

Omit the paragraphs (including heading); substitute:

### **Disposal by the person**

1. Under subsection 108-70(2) of the *Income Tax Assessment Act 1997* (ITAA 1997),<sup>1</sup> the disposal of the improved asset by A to B is taken to be a disposal of two separate assets. For the purposes of subsection 126-5(1), the disposal of each asset is 'because of' a court order under the *Family Law Act 1975*.
2. Any capital gain or capital loss made by A on the disposal of each asset to B is disregarded under subsection 126-5(4).

## 3. Paragraph 3

- (a) Omit the first sentence.
- (b) Omit 'paragraph 160ZZM(1)(c)'; substitute 'subsection 126-5(6)'.
- (c) Omit 'paragraph 160ZZM(1)(d)'; substitute 'subsection 126-5(5)'.

## 4. Paragraph 4

Omit the paragraph; substitute:

4. Any capital gain or capital loss made by B on the disposal of the pre-CGT asset is disregarded (assuming that B does not further improve it): paragraph 104-10(5)(a).

## 5. Paragraph 5

- (a) Omit 'Paragraph 160ZZM(1)(d)'; substitute 'Subsection 126-5(5)'.
- (b) Omit 'indexed cost base,'.

## 6. Paragraph 6

Omit the paragraph (including heading).

## 7. Example 1

Number the paragraphs 7 and 8.

- (a) Omit '1990'; substitute '2007'.
- (b) Omit 'subsection 160P(6)'; substitute 'subsection 108-70(2)'.
- (c) Omit 'There are no CGT consequences for AI.'; substitute 'Any capital gain or capital loss made by AI on transferring the asset to Peggy is disregarded.'.

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<sup>1</sup> All legislative references in this Determination are to the ITAA 1997 unless indicated otherwise.

**8. Example 2**

Omit the paragraph; substitute:

9. *Peggy sells the asset and the improvement to Bud in 2008. What are the tax consequences? Any capital gain or capital loss made by Peggy on the sale of the pre-CGT asset is disregarded. Peggy calculates her capital gain or capital loss in respect of the sale of the post-CGT improvement by reference to the relevant cost base or reduced cost base of the improvement.*

**9. Technical note**

Omit the paragraph, substitute:

**Technical note**

10. *In determining whether the threshold test in paragraph 108-70(2)(b) is met when an asset is disposed of because of an order of the Family Court, it is acceptable to regard the market value of the asset as the capital proceeds from the event. Note that this Taxation Determination does not consider whether the time of disposal is the date of the Court Order, the date of transfer or some other time.*

**10. Related Determinations**

Omit 'TD 10'.

**11. Subject references**

Omit the subject references; substitute

CGT assets; CGT composite assets; CGT cost base; CGT events; CGT marriage breakdown; CGT relationship breakdown; CGT roll-over relief; CGT same asset roll-over; CGT separate assets; disposal of assets; pre-CGT assets

**12. Legislative references**

Omit the legislative references; substitute:

ITAA 1997; ITAA 1997 104-10(5)(a); ITAA 1997 108-70(2); ITAA 1997 108-70(2)(b); ITAA 1997 126-5; ITAA 1997 126-5(4); ITAA 1997 126-5(5); ITAA 1997 126-5(6)

This Addendum applies from 14 September 2006, the date of effect of the repeal of the former capital gains tax provisions in Part IIIA of the *Income Tax Assessment Act 1936* by *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.

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**Commissioner of Taxation**

19 May 2010

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## ATO references

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