

***TD 1999/D74 - Income tax: capital gains: if a court makes an order under the Family Law Act 1975 declaring or altering a spouse's interest in property, do CGT events happen to CGT assets of the spouse for the purpose of section 126-5 or 126-15 of the Income Tax Assessment Act 1997?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D74 - Income tax: capital gains: if a court makes an order under the Family Law Act 1975 declaring or altering a spouse's interest in property, do CGT events happen to CGT assets of the spouse for the purpose of section 126-5 or 126-15 of the Income Tax Assessment Act 1997?*

This document has been finalised by TD 1999/48.



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## Draft Taxation Determination

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### **Income tax: capital gains: if a court makes an order under the *Family Law Act 1975* declaring or altering a spouse's interest in property, do CGT events happen to CGT assets of the spouse for the purpose of section 126-5 or 126-15 of the *Income Tax Assessment Act 1997*?**

#### 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.

#### Section 78 of the *Family Law Act 1975*

1. If a court makes an order under subsection 78(2) of the *Family Law Act 1975* (FLA 1975) giving effect to a declaration under subsection 78(1) of the FLA 1975 of a spouse's interest in property, no CGT event happens. The court order merely recognises existing interests in the property. There is no roll-over under section 126-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) or section 126-15 of the ITAA 1997 because no CGT event happens.

#### Section 79 of the *Family Law Act 1975*

2. If a court makes an order under section 79 of the FLA 1975 altering the interests of a spouse in property, a CGT event can happen because of the order. For example, the court might order an individual to dispose of their interest in it to their spouse. When the individual disposes of CGT assets in accordance with the order, CGT event A1 happens because of the court order.

3. Whether or not a CGT event happens because of an order under section 79 of the FLA 1975 depends on the terms of the order made by the court.

#### Note

4. A party might bring an action at law or in equity relying on contract, property or equity (particularly resulting trust or constructive trust) principles. If the court makes an order in such an action affecting the interests of a spouse, there is no roll-over under section 126-5 or 126-15 of the ITAA 1997 because:

- the court order is not under the *FLA 1975* or a corresponding foreign law;

- there is no maintenance agreement approved by a court under section 87 of the *FLA 1975* or a corresponding agreement approved by a court under a corresponding foreign law; or
- the court order is not under a State, Territory or foreign law relating to *de facto* marriage breakdowns.

## Your comments

5. 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  
Contact officer: Brian Hayes  
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Address: Australian Taxation Office  
140 Creek Street  
BRISBANE QLD 4000.

## Commissioner of Taxation

18 August 1999

### *Subject references:*

CGT asset; CGT event; CGT event A1; constructive trust; contract; court order; *de facto* marriage breakdown; disposal; equity; foreign law; interests in property; marriage breakdown; property; resulting trust; State law; Territory law; roll-over

### *Legislative references:*

ITAA 1997 126-5; ITAA 1997 126-15  
FLA 1975 78; FLA 1975 78(1); FLA 1975 78(2); FLA 1975 79

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### ATO references:

NO 99/19509-6  
BO CGT marriage breakdown summit 1999  
ISSN: 1038 - 8982