

***TD 1999/48 - 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 1999/48 - 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 ruling is being reviewed as a result of a recent court/tribunal decision. Refer to Decision Impact Statement: [Sandini Pty Ltd atf the Karratha Rigging Unit Trust & Ors v Ellison & Ors v Commissioner of Taxation of the Commonwealth of Australia & Ors](#) (Published 27 November 2018).

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## 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***

*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).*

#### **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 the property to their spouse. When the individual disposes of a CGT asset 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 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.

**Commissioner of Taxation**

3 November 1999

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*Previous draft:*

Previously issued in draft form as TD 1999/D74

*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; roll-over; State law; Territory law

*Legislative references:*

ITAA 1997 126-5; ITAA 1997 126-15; FLA 78; FLA 78(1); FLA 78(2); FLA 79; FLA 87

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## ATO references:

NO 99/19509-6

BO CGT marriage breakdown summit 1999

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