



Taxation Determination

Income tax: capital gains: does a CGT event happen for the purposes of section 126-5 or 126-15 of the *Income Tax Assessment Act 1997* because of a court order, if the order directs:

- (a) a transfer of non-specific matrimonial property; or**
- (b) a transfer of specific CGT assets?**

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. The answer to both questions is 'Yes'.
2. Most commonly, a court order under the *Family Law Act 1975* directs that specific assets be transferred to a spouse. A CGT event happens for each CGT asset specified and it happens because of the court order. Similarly, if a court order directs a transfer of non-specific property, a CGT event happens for each CGT asset involved and it happens because of the court order.

Note

3. A CGT event happens 'because of' a court order if the CGT event is caused by the court order.

Example

4. *A court order under the *Family Law Act 1975* might direct an individual to transfer 60% of their shares, or shares to a value of \$100,000, to their spouse. The individual may choose which*

shares to transfer and, on their transfer, CGT event A1 (about disposals of CGT assets) in section 104-10 of the Income Tax Assessment 1997 happens because of the court order. On the other hand, the court may order that a particular or a defined parcel of shares be transferred. Again, CGT event A1 happens because of the court order.

Commissioner of Taxation

3 November 1999

Previous draft:

Previously issued in draft form as TD 1999/D78

Subject references:

CGT asset; CGT event; CGT event A1; court order; matrimonial property; roll-over

Legislative references:

ITAA 1997 104-10; ITAA 1997 126-5; ITAA 1997 126-15; FLA

ATO references:

NO 99/19509-6

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