



Taxation Determination

Income tax: capital gains: if a CGT asset is transferred by agreement between spouses and a court order later sanctions its transfer, was the transfer of the asset made ‘because of’ the court order in terms of section 126-5 or 126-15 for roll-over to apply?

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. No. A CGT asset transferred between spouses by agreement, before a court order made under the *Family Law Act 1975* or a State, Territory or foreign law relating to *de facto* marriage breakdowns, is not transferred ‘because of’ the court order. The court order does not cause the CGT event (the transfer) to happen. Therefore, there is no roll-over under section 126-5 or 126-15 of the *Income Tax Assessment Act 1997* for the CGT event that happens on the transfer of the asset.

Note 1

2. You need to distinguish between a transfer of a CGT asset between spouses by agreement (as a result of which there is a change of ownership of the asset) and a spouse giving possession of a CGT asset to the other spouse. If possession only is given and there is no provision by which title in the asset will or may pass, no roll-over is needed at that stage because no CGT event happens. If possession only is given and a court order later sanctions transfer of the asset involved, CGT event A1 would happen because of the court order and roll-over would apply.

Note 2

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

Commissioner of Taxation

3 November 1999

Previous draft:

Previously issued in draft form as TD 1999/D79

Subject references:

asset; CGT asset; CGT event; CGT event A1; court order; ownership; possession; roll-over; spouse; transfer

Legislative references:

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

ATO references:

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