



Taxation Determination

Income tax: capital gains: is there roll-over under section 126-5 or 126-15 of the *Income Tax Assessment Act 1997* if a CGT asset is transferred in accordance with the terms of a court order under the *Family Law Act 1975* but after the time limit specified in the court order?

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. Yes. A CGT event A1 (about disposals of CGT assets) in section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997) happens on a transfer of a CGT asset by one spouse to another. If the asset is transferred in accordance with a court order under the *Family Law Act 1975*, even if the transfer occurs after the time limit specified in the court order, we accept for capital gains purposes that the CGT event happens 'because of' the court order. In essence, the CGT event - namely the transfer of the CGT asset - is caused by the court order even if it is done later than the court order requires. There is roll-over under section 126-5 or 126-15 of the ITAA 1997.

Note

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

Example

3. *A court order requires Bill to transfer 100 XYZ Corp shares to his spouse, Linda, within 3 months. The shares are transferred 4 months later. There is roll-over on the transfer of the shares, despite the transfer happening after the period specified in the court order.*

Commissioner of Taxation

3 November 1999

Previous draft:

Previously issued in draft form as TD 1999/D80

Subject references:

asset; CGT asset; CGT event; CGT event A1; court order; roll-over; spouse; time limit; transfer

Legislative references:

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

ATO references:

NO 99/19509-6

BO CGT marriage breakdown summit 1999

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