



Taxation Determination

Income tax: capital gains: do the record keeping requirements of Division 121 of the *Income Tax Assessment Act 1997* apply to both the transferor and transferee of a CGT asset to which the marriage breakdown roll-over provisions in Subdivision 126-A 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. Yes. Division 121 of the *Income Tax Assessment Act 1997* requires both the transferor and the transferee to keep records that relate to the CGT assets involved.
2. Subsection 121-20(1) provides that records must be kept '...of every act, transaction, event or circumstance that can reasonably be expected to be relevant to working out whether you have made a capital gain or capital loss from a CGT event. (It does not matter whether the CGT event has already happened or may happen in the future.)'
3. Subsection 121-20(1) applies to the transferor. The transferor must keep records of all relevant acts, transactions, events or circumstances relevant to the acquisition, holding and transfer of the CGT assets to which the marriage breakdown roll-over provisions apply.
4. Subsection 121-20(1) also applies to the transferee. The transferee must keep records of all relevant acts, transactions, events or circumstances relevant to the CGT assets received in order to calculate any capital gain or capital loss if any later CGT event happens to those assets.
5. It is in the interests of the transferee to obtain sufficient records from the transferor at the time of transfer to determine the first element of the cost base of any CGT assets received.

Commissioner of Taxation

3 November 1999

Previous draft:

Previously issued in draft form as TD 1999/D85

Subject references:

capital gain; capital loss; CGT asset; CGT event; marriage; marriage breakdown; record keeping; records; roll-over; transfer; transferee; transferor

Legislative references:

ITAA 1997 121-20; ITAA 1997 121-20(1); ITAA 1997 Div 121; ITAA 1997 Subdiv 126-A

ATO references:

NO 99/19509-6

BO CGT marriage breakdown summit 1999

FOI Index Detail: I 1020803

ISSN: 1038 - 8982