


***TD 1999/D78 - 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?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D78 - 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?*

This document has been finalised by TD 1999/52.

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## Draft Taxation Determination

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**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

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

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.
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.

### Your comments

5. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

# TD 1999/D78

Page 2 of 2

FOI status: draft only - for comment

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Comments by date: 15 September 1999  
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## Commissioner of Taxation

18 August 1999

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### *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 1975

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### ATO references:

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BO CGT marriage breakdown summit 1999

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