


TD 1999/D79 - Income tax: capital gains: if a CGT asset is transferred by agreement between spouses and a court order later sanctions its transfer, was the original transfer of the asset made 'because of' the court order in terms of section 126-5 or 126-15 for roll-over to apply?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D79 - Income tax: capital gains: if a CGT asset is transferred by agreement between spouses and a court order later sanctions its transfer, was the original transfer of the asset made 'because of' the court order in terms of section 126-5 or 126-15 for roll-over to apply?*

This document has been finalised by TD 1999/53.

Draft 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 original 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

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. 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 original transfer of the asset.

Note

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.

Your comments

3. 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.

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TD 1999/D79

Page 2 of 2

FOI status: draft only - for comment

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Commissioner of Taxation

18 August 1999

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 1975

ATO references:

NO 99/19509-6

BO CGT marriage breakdown summit 1999

ISSN: 1038 - 8982