


TD 1999/D81 - Income tax: capital gains: if a CGT asset other than one specified in a court order under the Family Law Act 1975 is transferred between spouses, is the asset transferred 'because of' the court order for the purposes of section 126-5 or 126-15 of the Income Tax Assessment Act 1997?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D81 - Income tax: capital gains: if a CGT asset other than one specified in a court order under the Family Law Act 1975 is transferred between spouses, is the asset transferred 'because of' the court order for the purposes of section 126-5 or 126-15 of the Income Tax Assessment Act 1997?*

This document has been finalised by TD 1999/55.

Draft Taxation Determination

Income tax: capital gains: if a CGT asset other than one specified in a court order under the *Family Law Act 1975* is transferred between spouses, is the asset transferred ‘because of’ the court order for the purposes of section 126-5 or 126-15 of the *Income Tax Assessment Act 1997*?

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. If a CGT asset different from the one specified in a court order is transferred between spouses, CGT event A1 (about disposals of CGT assets) in section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997), which happens on the transfer of the asset, does not happen ‘because of’ the court order. The court order does not cause the CGT event to happen. There is no roll-over under section 126-5 or 126-15 of the ITAA 1997.
2. There is roll-over, however, if a CGT asset that is to be transferred in accordance with a court order under the *Family Law Act 1975* changes in character before the transfer, such that a new or altered asset arises and is transferred. The court order in these circumstances causes the CGT event (the transfer) to happen.

Example 1

3. A court order requires Don to transfer 5000 ‘B’ Limited shares to Beverley within one month. Before the transfer of title, Don persuades Beverley to allow him to retain these shares. Don and Beverley agree that Don will transfer another parcel of shares of equivalent value.
4. As the court order required the transfer of 5000 ‘B’ Limited shares, the CGT event A,1 which happens on the transfer of the other parcel of shares, is not eligible for roll-over. Don and Beverley should obtain a variation to the original court order so that roll-over might apply to that parcel of shares.

Example 2

5. Amber and Russell obtain a consent order on the breakdown of their de facto marriage. The consent order requires Russell to transfer his 100 shares in ABC Ltd to Amber. After the

consent order is obtained but before the shares are transferred, ABC Ltd announces a share split and Russell receives an additional 100 shares in the company.

6. *If Russell transfers all of his shares (200) in the company to Amber, the resulting CGT event A1 will qualify for roll-over because ownership of the new shareholding is a direct legal entitlement flowing from the ownership of the original ABC Ltd shares and because the CGT event was caused by the court order.*

Your comments

7. 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.

Comments by date: 15 September 1999
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Commissioner of Taxation

18 August 1999

Subject references:

asset; CGT asset; CGT event; CGT event A1; court order; *de facto* marriage; roll-over; spouse; transfer

Legislative references:

ITAA 1997 126-5; ITAA 1997 126-15; FLA 1975

ATO references:

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