


***TD 1999/D82 - Income tax: capital gains: if a CGT asset acquired on or after 20 September 1985 is transferred by one spouse to another because of a court order under the Family Law Act 1975, when is the asset acquired under Division 109 of the Income Tax Assessment Act 1997 by the transferee?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D82 - Income tax: capital gains: if a CGT asset acquired on or after 20 September 1985 is transferred by one spouse to another because of a court order under the Family Law Act 1975, when is the asset acquired under Division 109 of the Income Tax Assessment Act 1997 by the transferee?*

This document has been finalised by TD 1999/56.

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# Draft Taxation Determination

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**Income tax: capital gains: if a CGT asset acquired on or after 20 September 1985 is transferred by one spouse to another because of a court order under the *Family Law Act 1975*, when is the asset acquired under Division 109 of the *Income Tax Assessment Act 1997* by the transferee?**

## 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 acquired on or after 20 September 1985 is transferred by one spouse to another because of a court order under the *Family Law Act 1975* (FLA 1975), the time of acquisition of that asset by the transferee depends on the provisions of Part 3-1 and Part 3-3 of the *Income Tax Assessment Act 1997* (ITAA 1997).
2. A court order might be silent on when an asset is to be acquired by the transferee. It might merely specify that one spouse transfer an asset to the other spouse on or by a certain date or within a certain period of time. It might specify that one spouse create certain rights in the other spouse (e.g., a lease). Regardless of the wording of the order, it is the action taken because of the court order that must be considered to determine the time of acquisition of the asset by the transferee for capital gains purposes. Division 109 of the ITAA 1997 (about when you acquire an asset) applies and provides general acquisition rules for capital gains purposes.

## Note

3. If a CGT asset acquired before 20 September 1985 is transferred by one spouse to another because of a court order under the FLA 1975, the transferee spouse is taken by subsection 126-5(6) of the ITAA 1997 to have acquired the asset before that day.

## Example

4. A court order under the FLA 1975 dated 1 October 1998 requires Mary to enter into a contract by 31 October 1998 to transfer her rental property to her spouse, Wendell, three months after the date of the order. Mary is to retain the income from, and incur the expenses of, the rental property until the change of ownership. Mary and Wendell enter into the contract on 30 October 1998 and Mary transfers title to Wendell on 31 December 1998.

5. *At general law, the property is transferred to Wendell on 31 December 1998. For capital gains purposes, CGT event A1 (about disposal of a CGT asset) occurs on 30 October 1998, the time that Mary entered the contract. For capital gains purposes, Wendell is taken to have acquired the rental property on 30 October 1998. For general taxation purposes, Mary would retain ownership and be entitled to the rental income from the property up until 31 December 1998. Any rental income after that date is assessable income of Wendell.*

## Your comments

6. 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  
Contact officer: Brian Hayes  
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140 Creek Street  
BRISBANE QLD 4000.

## Commissioner of Taxation

18 August 1999

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### *Subject references:*

asset; acquisition; CGT asset; CGT event A1; court order; disposal; ownership; rental income; rental property; roll-over; transfer; transferor; transferee

### *Legislative references:*

ITAA 1997 126-5(6); ITAA 1997 Div 109-A; ITAA 1997 Part 3-1; ITAA 1997 Part 3-3  
FLA 1975

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### ATO references:

NO 99/19509-6  
BO CGT marriage breakdown summit 1999  
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