


TD 1999/D85 - 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?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D85 - 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?*

This document has been finalised by [TD 1999/59](#).

Draft 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

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. 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.

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

TD 1999/D85

Page 2 of 2

FOI status: draft only - for comment

E-mail address: BrianL.Hayes@ato.gov.au
Telephone: (07) 3213 5898
Facsimile: (07) 3213 5030
Address: Australian Taxation Office
140 Creek Street
BRISBANE QLD 4000.

Commissioner of Taxation

18 August 1999

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

ISSN: 1038 - 8982