


TD 1999/D93 - Income tax: capital gains: is a court an entity for the purposes of CGT event D1 (about creating contractual or other legal or equitable rights in you) in sections 104-35 and section 109-5 of the Income Tax Assessment Act 1997 ?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D93 - Income tax: capital gains: is a court an entity for the purposes of CGT event D1 (about creating contractual or other legal or equitable rights in you) in sections 104-35 and section 109-5 of the Income Tax Assessment Act 1997 ?*

This document has been finalised by TD 1999/81.

Draft Taxation Determination

Income tax: capital gains: is a court an entity for the purposes of CGT event D1 (about creating contractual or other legal or equitable rights in you) in sections 104-35 and section 109-5 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. No.
2. The term 'entity' is defined in section 960-100 of the *Income Tax Assessment Act 1997* to mean an individual, a body corporate, a body politic, a partnership, any other unincorporated association or body of persons or a trust.
3. A court is not a body corporate, a body politic, or an individual (see *Kizon v. Palmer* (1997) 142 ALR 488 at 505). So, a court is not an 'entity' as that term is used in section 104-35 (CGT event D1) and the acquisition rules in section 109-5.

Note

4. The importance of this issue is for the application of the general acquisition rules in Division 109 in Part 3-1. If a court were an entity it could create rights in another entity and that entity would acquire the rights in accordance with subsection 109-5(2) and event number D1.

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.**

Comments by Date:	24 September 1999
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Commissioner of Taxation

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Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

Subject references:

asset; acquisition; capital gains; CGT event D1; court; creation of rights; entity

Legislative references:

ITAA 1997 104-35; ITAA 1997 109-5; ITAA 1997 109-5(2); ITAA 1997 960-100

Case references:

Kizon v. Palmer (1997) 142 ALR 488

ATO references:

NO 99/11446-1

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