


TD 1999/81 - Income tax: capital gains: is a court an entity for the purposes of Event Number D1 (about an entity creating contractual or other rights in you) in subsection 109-5(2) of the Income Tax Assessment Act 1997?

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Taxation Determination

Income tax: capital gains: is a court an entity for the purposes of Event Number D1 (about an entity creating contractual or other rights in you) in subsection 109-5(2) of the *Income Tax Assessment Act 1997*?

Preamble

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding on the Commissioner.*

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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, a trust or a superannuation fund.
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 the acquisition rules in subsection 109-5(2), Event Number D1.

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), Event [Number D1](#).

Commissioner of Taxation

15 December 1999

Previous draft:

Previously released as TD 1999/D93

Subject references:

acquisition; asset; body politic; capital gains; court; creation of rights; entity; Event Number D1

Legislative references:

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

Case references:

Kizon v. Palmer (1997) 142 ALR 488

ATO references:

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