


TD 1999/D78 - Income tax: capital gains: does a CGT event happen for the purposes of section 126-5 or 126-15 of the Income Tax Assessment Act 1997 because of a court order, if the order directs:(a) a transfer of non-specific matrimonial property; or (b) a transfer of specific CGT assets?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D78 - Income tax: capital gains: does a CGT event happen for the purposes of section 126-5 or 126-15 of the Income Tax Assessment Act 1997 because of a court order, if the order directs:(a) a transfer of non-specific matrimonial property; or (b) a transfer of specific CGT assets?*

This document has been finalised by TD 1999/52.

Draft Taxation Determination

Income tax: capital gains: does a CGT event happen for the purposes of section 126-5 or 126-15 of the *Income Tax Assessment Act 1997* because of a court order, if the order directs:

- (a) a transfer of non-specific matrimonial property; or**
- (b) a transfer of specific CGT assets?**

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. The answer to both questions is 'Yes'.
2. Most commonly, a court order under the *Family Law Act 1975* directs that specific assets be transferred to a spouse. A CGT event happens for each CGT asset specified and it happens because of the court order. Similarly, if a court order directs a transfer of non-specific property, a CGT event happens for each CGT asset involved and it happens because of the court order.
3. A CGT event happens 'because of' a court order if the CGT event is caused by the court order.

Example

4. A court order under the *Family Law Act 1975* might direct an individual to transfer 60% of their shares, or shares to a value of \$100,000, to their spouse. The individual may choose which shares to transfer and, on their transfer, CGT event A1 (about disposals of CGT assets) in section 104-10 of the *Income Tax Assessment 1997* happens because of the court order. On the other hand, the court may order that a particular or a defined parcel of shares be transferred. Again, CGT event A1 happens because of the court order.

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.

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FOI status: draft only - for comment

Comments by date: 15 September 1999
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Commissioner of Taxation

18 August 1999

Subject references:

CGT asset; CGT event; CGT event A1; court order; matrimonial property; roll-over

Legislative references:

ITAA 1997 104-10; ITAA 1997 126-5; ITAA 1997 126-15; FLA 1975

ATO references:

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