


TD 1999/D80 - Income tax: capital gains: is there roll-over under section 126-5 or 126-15 of the Income Tax Assessment Act 1997 if a CGT asset is transferred in accordance with the terms of a court order under the Family Law Act 1975 but after the time limit specified in the court order?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D80 - Income tax: capital gains: is there roll-over under section 126-5 or 126-15 of the Income Tax Assessment Act 1997 if a CGT asset is transferred in accordance with the terms of a court order under the Family Law Act 1975 but after the time limit specified in the court order?*

This document has been finalised by TD 1999/54.

Draft Taxation Determination

Income tax: capital gains: is there roll-over under section 126-5 or 126-15 of the *Income Tax Assessment Act 1997* if a CGT asset is transferred in accordance with the terms of a court order under the *Family Law Act 1975* but after the time limit specified in the court order?

Preamble

Draft Taxation Determinations 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. A CGT event A1 (about disposals of CGT assets) in section 104-10 of the *Income Tax Assessment Act 1997* (ITAA 1997) happens on a transfer of a CGT asset by one spouse to another. If the asset is transferred in accordance with a court order under the *Family Law Act 1975*, even if the transfer occurs after the time limit specified in the court order, we accept for capital gains purposes that the CGT event happens ‘because of’ the court order. In essence, the CGT event – namely the transfer of the CGT asset – is caused by the court order even if it is done later than the court order requires. There is roll-over under section 126-5 or 126-15 of the ITAA 1997.

Example

2. A court order requires Bill to transfer 100 XYZ Corp shares to his spouse, Linda, within 3 months. The shares are transferred 4 months later. There is roll-over on the transfer of the shares, despite the transfer happening after the period specified in the court order.

Your comments

3. 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
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Commissioner of Taxation

18 August 1999

Subject references:

asset; CGT asset; CGT event; CGT event A1; court order; roll-over; spouse; time limit; transfer

Legislative references:

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

ATO references:

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