


TD 2000/40 - Income tax: capital gains: what are 'special circumstances' for the purposes of subsection 124-75(3) of the Income Tax Assessment Act 1997 ?

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Taxation Determination

Income tax: capital gains: what are ‘special circumstances’ for the purposes of subsection 124-75(3) of the *Income Tax Assessment Act 1997*?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 3 of this Taxation Determination are a ‘public ruling’ for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

Date of Effect

This Taxation Determination applies to years commencing both before and after its date of issue. However, it 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. The expression ‘special circumstances’ in subsection 124-75(3) of the *Income Tax Assessment Act 1997* by its nature is incapable of a precise or exhaustive definition.
2. Subsection 124-75(3) requires you to incur expenditure in acquiring a replacement CGT asset – or, if part of the original asset was lost or destroyed, requires you incur capital expenditure in repairing or restoring it – within a defined period of time ‘or within such further time as the Commissioner allows in special circumstances’.
3. What are ‘special circumstances’ depends on the facts of each particular case. Application of the expression is best illustrated by examples.

Example 1:

4. *Amanda and John own a saddle shop. A State authority compulsorily acquires the shop to build a railway shunting yard. Compensation was not received by Amanda and John until one month before they are required by subsection 124-75(3) to replace the shop. Amanda and John are unable to acquire a replacement asset in this time. We would accept in this case that the delay in receiving the compensation constitutes special circumstances warranting an extension of time.*

Example 2:

5. *Gordon owned a wool processing factory which was destroyed by fire. Gordon immediately commences to negotiate to purchase a nearby factory, taking possession pending*

settlement. After lengthy negotiations, however, the purchase of the factory falls through. He then purchases another property but just outside the 2 year time period . On these facts, we would accept that Gordon has done what is reasonable to acquire a replacement asset and we would allow him further time.

Example 3:

6. *Graeme had a commercial property compulsorily acquired by a State authority. Graeme is having a protracted legal dispute with the authority over the quantum of the compensation. On these facts, we would accept that there are special circumstances to allow further time.*

Example 4:

7. *Daisy and Damien own a rental property by the sea. The property is resumed for a government project and compensation is paid shortly afterwards. At the end of the statutory 2 year period (subsection 124-75(3)), Daisy and Damien had failed to acquire a replacement asset or to take measures to acquire one because they did not know that they had to do so within a particular time frame. This is an example where special circumstances would not exist for the Commissioner to allow further time.*

Commissioner of Taxation**13 September 2000**

Previous draft:

Previously issued as TD 1999/D57

Related Rulings/Determinations:

TD 2000/36; TD 2000/37; TD 2000/38; TD 2000/39; TD 2000/41; TD 2000/42; TD 2000/43;
TD 2000/44; TD 2000/45

Subject references:

- asset
- CGT asset
- replacement asset
- special circumstances

Legislative references:

- ITAA 1997 124-75(3)

ATO references:

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