



TD 2000/41 - Income tax: capital gains: are the two requirements in subsection 124-75(4) of the Income Tax Assessment Act 1997 for a CGT asset acquired to replace an original asset alternative and mutually exclusive requirements?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 4 July 2007

Taxation Determination

Income tax: capital gains: are the two requirements in subsection 124-75(4) of the *Income Tax Assessment Act 1997* for a CGT asset acquired to replace an original asset alternative and mutually exclusive requirements?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 13 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.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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).

Note: The Addendum to this Determination that issued on 4 July 2007 explains our view of the law as it applied from 1 July 2007. You can rely upon the Addendum on and from its date of issue for the purposes of section 105-60 of Schedule 1 to the Taxation Administration Act.

1. Yes.
2. There are two requirements in subsection 124-75(4) of the *Income Tax Assessment Act 1997*, either of which can be satisfied.
3. The first requirement in subsection 124-75(4) relates to the use of the 'other asset' (that is, the replacement CGT asset) in your business or its installation ready for use in the business.
4. The first requirement is satisfied if, just before the event giving rise to a roll-over under Subdivision 124-B happened, the original asset:
 - was used in your business;
 - was installed ready for use in your business; or
 - was in the process of being installed ready for use in your business;

and the other asset is used in the same business, or is installed ready for use in the same business, for a reasonable time after it is acquired.

5. The second requirement in subsection 124-75(4) relates to the use of the other asset for the same purpose as, or for a similar purpose to, the purpose for which you used the original asset.

6. The second requirement is satisfied if you use the other asset for a reasonable time after you acquired it and your use of that asset is for the same purpose as, or for a similar purpose to, the purpose for which you used the original asset just before the event giving rise to a roll-over under Subdivision 124-B happened.

7. If the first requirement in subsection 124-75(4) is not satisfied – say, because the original asset was not used in your business or because you are no longer carrying on any business – the second requirement in the subsection must be satisfied for a roll-over to be available.

8. The second requirement in subsection 124-75(4) can be satisfied by using another CGT asset for the required purpose even if you are not, nor have ever been, carrying on business.

9. If you use the other asset in the course of carrying on a business, the second requirement in subsection 124-75(4) can also be satisfied if you had used the original asset in the course of carrying on a different business – provided that you use the other asset for the same purpose as, or for a similar purpose to, the purpose for which you used the original asset.

10. The second requirement in subsection 124-75(4) is not satisfied if you use the other asset in the same business in which you used the original asset. To interpret the second requirement more broadly to cover this situation would render the first requirement in subsection 124-75(4) largely redundant.

11. This Taxation Determination rewrites and replaces Taxation Determination TD 94/76. TD 94/76 is now withdrawn.

Note 1:

12. An improvement made to an existing CGT asset does not constitute another (replacement) CGT asset for the purposes of subsection 124-75(4) unless the improvement is taken, for example by Subdivision 108-D, to be a separate CGT asset and the improvement otherwise satisfies the requirements of Subdivision 124-B.

Note 2:

13. There is no restriction on the number of CGT assets which may be treated as replacement assets for an original CGT asset in the replacement-asset roll-over provisions in Subdivision 124-B provided that they each satisfy the relevant requirements of that Subdivision.

Example 1:

14. *X Ltd owns premises in which it conducts a manufacturing business. The State Government compulsorily acquires a portion of the land and buildings from which X Ltd conducts its business and pays X Ltd \$1 million. X Ltd uses the money within 12 months to acquire:*

- (a) machinery for use in the business; or*
- (b) machinery for use in a real estate business which X Ltd conducts; or*
- (c) premises in which to conduct a real estate business that X Ltd owns; or*
- (d) land as an investment property; or*
- (e) trading stock for the manufacturing business.*

15. For the purposes of Subdivision 124-B, X Ltd has acquired a replacement asset in cases (a) and (c). In case (a) X Ltd has satisfied the business asset test and in case (c) X Ltd has satisfied the same or similar purpose test. In cases (b) and (d) neither test has been satisfied and in case (e) roll-over is not available for the asset because it constitutes trading stock and subsection 124-75(5) precludes trading stock from being a replacement asset.

16. In relation to Example 1 at paragraph 14 of this Determination, where the compulsory acquisition by the State Government (the relevant CGT event in this case) happens on or after 1 July 2001, the machinery no longer qualifies as a replacement asset for the purposes of the Subdivision 124-B rollover (see paragraph 124-75(2)(a) of the ITAA 1997). This is because the machinery is a depreciating asset whose decline in value is worked out under Division 40 of the ITAA 1997. Therefore, even if X Ltd has satisfied the business asset test in case (a), it has not acquired a replacement asset. Similarly, in respect of case (b), X Ltd has not acquired a replacement asset because apart from failing the tests in subsection 124-75(4) of the ITAA 1997, it has also failed the test in paragraph 124-75(2)(a).

Commissioner of Taxation

13 September 2000

Previous draft:

Previously issued as TD 1999/D58

Related Rulings/Determinations:

TD 2000/36; TD 2000/37; TD 2000/38; TD 2000/39; TD 2000/40; TD 2000/42; TD 2000/43;
TD 2000/44; TD 2000/45

Subject references:

- asset
- acquisition
- CGT asset
- business asset
- improvement
- purpose
- replacement asset
- roll-over
- same purpose
- separate asset
- similar purpose
- trading stock
- use

Legislative references:

- ITAA 1997 Div 40
- ITAA 1997 Subdivision 124-B
- ITAA 1997 Subdivision 108-D
- ITAA 1997 124-75(2)(a)
- ITAA 1997 124-75(4)
- ITAA 1997 124-75(5)

ATO references:

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