



Taxation Determination

Income tax: capital gains: what is the scope of the words ‘use the other asset ... for the same purpose ... or for a similar purpose’ in subsection 124-75(4) of the *Income Tax Assessment Act 1997* in relation to a replacement asset?

Preamble

*The number, subject heading, date of effect and paragraphs 1 and 2 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 words ‘use the other asset ... for the same purpose ... or for a similar purpose’ should be read in their context in subsection 124-75(4) of the *Income Tax Assessment Act 1997*.
2. Whether a CGT asset is used for the same or a similar purpose as another asset is a question of fact and degree. Application of the same or similar purpose test is best illustrated by examples.

Example 1:

3. *Steve owned machinery for use in his manufacturing business. The machinery is destroyed by a fire. He replaces the machinery with a rental property. The rental property is not used for the same or a similar purpose to the purpose for which the machinery was used.*

Example 2:

4. *Geoff owned a printing press which he used in his business. The printing press is entirely destroyed by a fire and Geoff decides to close down his printing business and to open a pet shop. He uses the insurance proceeds from the destruction of the printing press to acquire shop fittings he needs for his new pet shop. For the purposes of Subdivision 124-B, these replacement assets do not satisfy the business asset test in subsection 124-75(4) because they are not used in the printing business. Additionally, the shop fittings do not satisfy the same or similar purpose test in the*

subsection. This is so because, although both the printing press and the shop fittings are assets used in a business, they are not used for the same or a similar purpose in the respective businesses.

Example 3:

5. Marina owns a house near the sea which she has always rented out. The house has, for capital gains purposes, been treated as an asset separate from the land on which it is situated – the land having been acquired in 1980 - because of the operation of Subdivision 108-D. The house is destroyed by a cyclone and she has the choice of either:

- (a) acquiring a city unit for rental purposes; or
- (b) rebuilding the house to use as her main residence.

For the purposes of Subdivision 124-B, the use of the city unit will fall within the scope of the same or similar purpose test. The use of the new building as a main residence will not.

Commissioner of Taxation

13 September 2000

Previous draft:

Previously issued as TD 1999/D59

Related Rulings/Determinations:

TD 2000/36; TD 2000/37; TD 2000/38; TD 2000/39; TD 2000/40; TD 2000/41; TD 2000/43;
TD 2000/44; TD 2000/45

Subject references:

- asset
- CGT asset
- Purpose
- replacement asset
- same purpose
- separate asset
- similar purpose

Legislative references:

- ITAA 1997 Subdivision 108-D
 - ITAA 1997 Subdivision 124-B
 - ITAA 1997 124-75(4)
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ATO references:

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