
Taxation Determination

Income tax: capital gains: what constitutes 'a reasonable time' for the purposes of subsection 124-75(4) 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. Subsection 124-75(4) of the *Income Tax Assessment Act 1997* requires a taxpayer who otherwise satisfies the business asset test or the same or similar purpose test to use the other (replacement) asset for 'a reasonable time' after they acquired it. What is 'a reasonable time' is an objective question and the answer depends on the facts of each particular case.

2 Application of the expression 'a reasonable time' is best illustrated by examples.

Note:

3. The 'reasonable time' test in relation to use of a replacement asset after its acquisition may not be satisfied if you continue to own the asset but a change occurs in its nature or use. For example, this could happen if you decide to turn a replacement rental property into your main residence. The period of use of the new asset in the same business or for the same or similar purpose must be of sufficient duration to be regarded as a reasonable time having regard to the entire period of its ownership.

Example 1:

4. *Ken and Dave operate a bottling factory. A gas explosion destroys a machine in the factory and they replace it with new machinery. The machinery is used for three weeks before Ken and Dave decide to sell it to purchase a new building. The new machinery is used for its entire period of ownership (3 weeks) in the same business as the destroyed machinery. In these circumstances,*

the use in the same business for the entire period the machinery was owned is use for a 'reasonable time'.

Example 2:

5. *Robert and Debbie own a harbourside rental property which is compulsorily acquired to make way for a monorail track. They buy an apartment as another rental property. After 5 years, Robert and Debbie make the apartment their main residence and live there for the next 8 years. The apartment was used for 'a reasonable time' for the same or a similar purpose as the harbourside property was used.*

Commissioner of Taxation13 September 2000

Previous draft:

Previously issued as TD 1999/D61

Related Rulings/Determinations:

TD 2000/36; TD 2000/37; TD 2000/38; TD 2000/39; TD 2000/40; TD 2000/41; TD 2000/42; TD 2000/43; TD 2000/45

Subject references:

- asset
- acquisition
- business
- business asset
- CGT asset
- ownership
- purpose
- reasonable time
- same purpose test
- similar purpose test
- use

Legislative references:

- ITAA 1997 124-75(4)

ATO references:

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