


TD 1999/D58 - Income tax: capital gains: are the 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 been finalised by TD 2000/41.

Draft Taxation Determination

Income tax: capital gains: are the 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

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office (ATO). DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the ATO.

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 nor installed ready for use in your business, nor in the process

of being so installed, 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 an other 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 – in the sense 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 –if you had used the original asset in the course of carrying on a business, provided that the two businesses are different businesses.

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 draft Taxation Determination rewrites and will, when it is finalised, replace Taxation Determination TD 94/76.

Note 1:

12. An improvement made to an existing CGT asset does not constitute an other (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 on which the premises stand and pays X Ltd \$1 million. X Ltd uses the money within 12 months to:*

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

Your comments

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.

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Commissioner of Taxation

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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 124-75(4), 124-75(5)

ITAA 1997 Subdivision 108-D

ITAA 1997 Subdivision 124-B

ATO references:

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