


TD 1999/D59 - 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?

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This document has been finalised by TD 2000/42.

Draft 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

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. 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. It depends on the particular circumstances of each case. 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 needed 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 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.

6. 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.

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.

Comments by Date:	1 September 1999
Contact Officer:	Lila Soares
E-Mail address:	Lila.Soares@ato.gov.au
Telephone:	(02) 9354 3149
Facsimile:	(02) 9354 3379
Address:	Australian Taxation Office
	PO Box CC1
	PARRAMATTA NSW 2123

Commissioner of Taxation

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Legislative references:

ITAA 1997 124-75(4)

ITAA 1997 Subdivision 108-D

ITAA 1997 Subdivision 124-B

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