


TD 1999/D61 - Income tax: capital gains: what constitutes 'a reasonable time' for the purposes of subsection 124-75(4) of the Income Tax Assessment Act 1997?

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This document has been finalised by TD 2000/44.

Draft 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

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. 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. In applying the 'reasonable time test' to use of a replacement asset after its acquisition, care needs to be taken in cases where you continue to own the asset but a change occurs in its nature or use. For example, you might decide to turn a replacement rental property into your main residence. You need to ensure that the period of use of the new asset is 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 3 week period is 'a reasonable time'.

Example 2:

5. Robert and Debbie own a harbour side 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.

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The apartment is used for 'a reasonable time' for the same or a similar purpose as the harbour side property was used.

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
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Commissioner of Taxation

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Subject references:

Asset; acquisition; business 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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