


***TD 1999/D62 - Income tax: capital gains: in what circumstances is it reasonable to treat one CGT asset as 'substantially the same' as another CGT asset for the purposes of paragraphs 124-85(3)(b) and 124-95(6)(b) of the Income Tax Assessment Act 1997?***

 This cover sheet is provided for information only. It does not form part of *TD 1999/D62 - Income tax: capital gains: in what circumstances is it reasonable to treat one CGT asset as 'substantially the same' as another CGT asset for the purposes of paragraphs 124-85(3)(b) and 124-95(6)(b) of the Income Tax Assessment Act 1997?*

This document has been finalised by [TD 2000/45](#).



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## Draft Taxation Determination

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### **Income tax: capital gains: in what circumstances is it reasonable to treat one CGT asset as 'substantially the same' as another CGT asset for the purposes of paragraphs 124-85(3)(b) and 124-95(6)(b) 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. Under paragraph 124-85(3)(b) and paragraph 124-95(6)(b) of the *Income Tax Assessment Act 1997*, if:

- (a) you acquired a CGT asset before 20 September 1985 and it, or part of it, is lost or destroyed on the happening of a natural disaster; and
- (b) you incur expenditure to acquire another CGT asset,

you are taken to have acquired the other asset before that day if 'it is reasonable to treat the other asset as substantially the same as the original asset'.

2. Whether it is reasonable to treat a CGT asset as substantially the same as another is an objective question and the answer depends on the facts of each particular case. Consideration needs to be given to such matters as the nature of the replacement asset, the use to which it is put, its location, size, value, quality, and composition compared with those attributes of the original asset.

3. Application of this reasonableness test is best illustrated by examples.

#### **Note:**

4. We stress that the examples which follow are intended to be indicative only and the presence or absence of any factor specified in them would not necessarily be determinative of a change in result.

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<b>original asset</b>	<b>market value before disaster</b>	<b>new asset</b>	<b>cost</b>	<b>substantially the same?</b>
<b>Example 1</b> <i>3 bedroom brick veneer house</i>	<i>\$200,000</i>	<i>4 bedroom brick veneer house built in accordance with new recommended structural design</i>	<i>\$320,000</i>	<i>yes</i>
<b>Example 2</b> <i>2 bedroom 50 year old fibro rental cottage</i>	<i>\$100,000</i>	<i>newly built 5 bedroom double brick 2-storey rental house</i>	<i>\$260,000</i>	<i>no</i>
<b>Example 3</b> <i>3 bedroom terrace house 40 km from the city centre</i>	<i>\$170,000</i>	<i>3 bedroom terrace house in the city centre</i>	<i>\$370,000</i>	<i>no</i>
<b>Example 4</b> <i>piece of machinery used in a printing business</i>	<i>\$20,000</i>	<i>truck to be used for deliveries for the printing business</i>	<i>\$70,000</i>	<i>no</i>
<b>Example 5</b> <i>a 12m<sup>2</sup> ice-cream counter in a shopping mall</i>	<i>\$150,000</i>	<i>a 50m<sup>2</sup> shop on the street opposite the mall used for the same business</i>	<i>\$350,000</i>	<i>no</i>
<b>Example 6</b> <i>a 2000m<sup>2</sup>, one storey warehouse used for a toy business</i>	<i>\$500,000</i>	<i>a two storey warehouse on a 1250m<sup>2</sup> block (totally 2500m<sup>2</sup> floor space) 10 metres down the road</i>	<i>\$650,000</i>	<i>yes</i>

5. *Having regard to the use, location, size, value, quality, and composition of the new assets, the following comments are offered:*

**Example 1**

6. *The new asset is similar to the original asset in all respects except the number of bedrooms and the structural design. We consider that it would be reasonable to treat the new asset as substantially the same as the original asset.*

**Example 2**

7. *The size, value, quality, use and composition of the new asset is different from the original asset. We consider that it would not be reasonable to treat the assets as substantially the same.*

**Example 3**

8. *While all factors except location and value are the same, the change in location and greatly increased value are enough to render it unreasonable to treat the assets as substantially the same.*

**Example 4**

9. *Although the asset is to be used in the same business, the complete change in its nature (from machinery to a truck) means that it is unreasonable to treat the assets as substantially the same.*

**Example 5**

10. *Although the asset is used in the same business, the nature, size and value of the premises are substantially different. It would not be reasonable to treat the premises as substantially the same.*

**Example 6**

11. *Having regard to the size and location of the warehouse, the new warehouse is similar to the original except for the number of storeys. It would be reasonable to treat the warehouses as substantially the same.*

## Your comments

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**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.**

<b>Comments by Date:</b>	<b>1 September 1999</b>
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FOI status: draft only - for comment

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## Commissioner of Taxation

4 August 1999

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*Subject references:*

Asset; CGT asset; destruction; natural disaster; loss; reasonable; replacement asset; same; substantially the same

*Legislative references:*

ITAA 1997 124-85(3)(b), 124-95(6)(b)

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ATO references:

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