


***TD 93/D101 - Income tax: where a taxpayer receives a combination of cash and a replacement asset as compensation for the compulsory acquisition of a portion of land he or she used in carrying on a business, and incurs expenditure in constructing a building on the remaining land for use in that business, is rollover relief available under both section 160ZZK and section 160ZZL of the Income Tax Assessment Act 1936 ?***

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This document has been finalised by TD 94/78.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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**Income tax: where a taxpayer receives a combination of cash and a replacement asset as compensation for the compulsory acquisition of a portion of land he or she used in carrying on a business, and incurs expenditure in constructing a building on the remaining land for use in that business, is rollover relief available under both section 160ZZK and section 160ZZL of the *Income Tax Assessment Act 1936* ?**

1. Yes. Rollover relief is available to each part of the resumed land. Section 160ZZK is available to the portion of land for which a replacement asset is acquired, and section 160ZZL is available to the remaining portion where a replacement asset is received as compensation.
2. The original asset for the purposes of both section 160ZZK and section 160ZZL is capable of being two separate parts of the resumed land.
3. The building is a replacement asset for the reasons given in TD TD 93/D99.
4. As explained in TD TD 93/D100, section 160ZZL does not require a replacement asset to be of the same nature as, or used for a similar purpose to, the original asset.

**Notes:**

- (i) Where the original asset is acquired on or after 20 September 1985 the market value of the replacement asset must exceed the amount that would have been the indexed cost base of the resumed portion of land.
- (ii) The building must be acquired not earlier than one year before the compulsory acquisition and not later than one year after the end of the year of income in which the compulsory acquisition took place ( or within such further period as the Commissioner in special circumstances allows ).
- (iii) If the land was acquired before 20 September 1985, for the building to be deemed to have been acquired before that date, the cost of constructing the building must not exceed 120% of the market value of the portion of land compulsorily acquired.
- (iv) The taxpayer must make an election that both section 160ZZK and section 160ZZL are to apply.
- (v) The replacement assets are not trading stock.

Example:

*X operates a business of commercial development and leasing. X acquired a parcel of land in 1988 for the purpose of constructing office buildings for lease. The State Government compulsorily acquires a portion of this land in exchange for \$ 1 million and a parcel of land. The market value of the land exceeds the indexed cost base of the equivalent portion of the resumed land.*

*X immediately uses exactly \$1 million to construct office buildings for lease on the remaining land. The office buildings and the land are not trading stock.*

*Where appropriate elections are made, sections 160ZZK and 160ZZL will work together to deem there to be no disposal of the resumed land. The cost base of the office buildings will be \$1 million less the capital gain that would have accrued on disposal of the equivalent portion of the resumed land if rollover relief was not available. The cost base of the land would be the amount that would have been the indexed cost base of the remaining portion of the resumed land immediately prior to the compulsory acquisition.*

### **Commissioner of Taxation**

29/04/93

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FOI INDEX DETAIL: Reference No.

Related Determinations: TD 93/D99 ; TD 93/D100

Related Rulings:

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Legislative Ref: ITAA Div 10D of Part III; ITAA 160P; ITAA 160ZZK; ITAA 160ZZL

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