


TD 93/D99 - Income tax: where a taxpayer receives cash compensation for the compulsory acquisition of a portion of land which 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 under section 160ZZK of the Income Tax Assessment Act 1936 available?

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This document has been finalised by TD 94/76.

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Draft Taxation Determination

Income tax: where a taxpayer receives cash compensation for the compulsory acquisition of a portion of land which 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 under section 160ZZK of the *Income Tax Assessment Act 1936* available?

1. Yes. Rollover relief is available under section 160ZZK as the building is a replacement asset for the purposes of that section.
2. The building is treated as separate from the land for the purposes of Division 10D of the ITAA, and so subsection 160P(4) deems the building to be a separate asset from the land. Thus expenditure on constructing the building is deemed to be expenditure incurred in acquiring an asset.
3. The building is used in the taxpayer's business and therefore satisfies the requirements of subsection 160ZZK(7) in being a replacement asset.

Notes:

- (i) The buildings 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).
- (ii) 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.
- (iii) The taxpayer must make an election that section 160ZZK is to apply.
- (iv) The building is 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 and pays X \$ 1 million.

X immediately utilises exactly \$1 million in constructing office buildings on the remaining land.

Rollover relief is available under section 160ZZK to deem there not to be a 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 resumed land if rollover relief was not available.

Commissioner of Taxation

29/04/93

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Related Rulings:

Subject Ref: capital gains; rollovers; compulsory acquisition

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