


TD 2000/38 - Income tax: capital gains: is roll-over available under Subdivision 124-B of the Income tax Assessment Act 1997 for the loss or destruction of a CGT asset if the asset is damaged?

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Taxation Determination

Income tax: capital gains: is roll-over available under Subdivision 124-B of the *Income tax Assessment Act 1997* for the loss or destruction of a CGT asset if the asset is damaged?

Preamble

*The number, subject heading, date of effect and paragraphs 1 and 2 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

Date of Effect

This Taxation Determination applies to years commencing both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. No. Loss or destruction does not include damage. Subdivision 124-B of the *Income Tax Assessment Act 1997* does not apply if all that happens is that a CGT asset is damaged or a part of a CGT asset is damaged. Subsection 124-70(1) provides that you may be able to choose a roll-over if, among other events, a CGT asset you own, or part of it, is lost or destroyed. The requirement is that the asset or part of it be lost or destroyed, not damaged.

2. You need to take care to differentiate between what constitutes damage to a CGT asset or damage to part of the CGT asset (not an eligible event for a roll-over) and a loss or destruction of the CGT asset or loss or destruction of part of it (an eligible event for roll-over). Whether a CGT asset or part of it is damaged rather than destroyed is a question of fact that depends on the circumstances of each particular case.

Example 1:

3. *The keel of a yacht is destroyed. The yacht is damaged, though not destroyed. However, the keel, a part of the yacht, is destroyed. Roll-over is available for the keel if the other requirements of Subdivision 124-B are satisfied.*

Example 2:

4. *A holiday home is totally reduced to rubble as a result of a tropical cyclone. Roll-over is available for the destruction of the home if the other requirements of Subdivision 124-B are satisfied. However, if only part of the house is damaged (without that part of the house being*

destroyed) during the cyclone (for example, some bricks are chipped), roll-over is not available because neither the house nor part of it has been destroyed. If part of the house (for example, a window) is destroyed by the cyclone, roll-over is available for the window if the other requirements of Subdivision 124-B are satisfied.

Example 3:

5. The corrugated iron roof of a factory is totally torn off and destroyed as a result of a severe hailstorm. Roll-over is available for the destruction of the factory roof - part of the factory having been destroyed. Although there is no loss or destruction of the factory, there is of the roof. However, if the roof is just damaged by denting during the hailstorm, roll-over is not available because neither the factory nor the roof has been lost or destroyed.

Commissioner of Taxation**13 September 2000**

Previous draft:

Previously issued as TD 1999/D55

Related Rulings/Determinations:

TD 2000/36; TD 2000/37; TD 2000/39; TD 2000/40; TD 2000/41; TD 2000/42; TD 2000/43;
TD 2000/44; TD 2000/45

Subject references:

- asset
- CGT asset
- damage
- destruction
- loss
- part
- part of a CGT asset
- roll-over

Legislative references:

- ITAA 1997 Subdivision 124-B
 - ITAA 1997 124-70(1)
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ATO references:

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