


TD 2000/43 - Income tax: capital gains: if a CGT asset is owned by partners in partnership, how do the replacement asset tests in Subdivision 124-B of the Income Tax Assessment Act 1997 apply?

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Taxation Determination

Income tax: capital gains: if a CGT asset is owned by partners in partnership, how do the replacement asset tests in Subdivision 124-B of the *Income Tax Assessment Act 1997* apply?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 3 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. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally 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. The replacement asset tests apply at the partner level and not at the level of the partnership.
2. An interest in an asset of a partnership is itself a CGT asset as defined in section 108-5 of the *Income Tax Assessment Act 1997*: see paragraph 108-5(2)(c). Each individual partner's interest in each asset of the partnership is the relevant CGT asset for a roll-over under Subdivision 124-B. A partner's interest in each partnership asset, for instance, may be compulsorily acquired by an Australian government agency in terms of paragraph 124-70(1)(a).
3. Each individual partner needs to satisfy the tests for their particular interest in each CGT asset of the partnership to qualify for a roll-over under Subdivision 124-B.

Commissioner of Taxation

13 September 2000

Previous draft:

Previously issued as TD 1999/D60

Related Rulings/Determinations:

TD 2000/36; TD 2000/37; TD 2000/38; TD 2000/39; TD 2000/40; TD 2000/41; TD 2000/42;
TD 2000/44; TD 2000/45

Subject references:

- asset
- CGT asset
- interests
- interests in partnership assets
- partners
- partnership
- replacement asset
- roll-over

Legislative references:

- ITAA 1997 108-5
- ITAA 1997 108-5(2)(c)
- ITAA 1997 124-70(1)(a)
- ITAA 1997 Subdivision 124-B

ATO references:

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