



---

## Taxation Determination

---

**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***

*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. 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. 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 in acquiring 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 cost, 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.

Original asset	Market value before disaster	New asset	Cost	Substantially the same?
<b>Example 1</b> <i>3 bedroom brick veneer house</i>	\$200,000	<i>4 bedroom brick veneer house built in accordance with new recommended structural design</i>	\$320,000	yes
<b>Example 2</b> <i>2 bedroom 50 year old fibro rental cottage</i>	\$100,000	<i>newly built 5 bedroom double brick 2-storey rental house</i>	\$260,000	no
<b>Example 3</b> <i>3 bedroom terrace house 40 km from the city centre</i>	\$170,000	<i>3 bedroom terrace house in the city centre</i>	\$370,000	no
<b>Example 4</b> <i>piece of machinery used in a printing business</i>	\$20,000	<i>truck to be used for deliveries for the printing business</i>	\$70,000	no
<b>Example 5</b> <i>a 12m<sup>2</sup> ice-cream counter in a shopping mall</i>	\$150,000	<i>a 50m<sup>2</sup> shop on the street opposite the mall used for the same business</i>	\$350,000	no