

TD 94/76 - Income tax: capital gains: when is an asset regarded as 'acquired by a taxpayer in replacement of an asset disposed of by the taxpayer' for the purposes of section 160ZZK of the Income Tax Assessment Act 1936 ?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *8 September 1994*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: capital gains: when is an asset regarded as 'acquired by a taxpayer in replacement of an asset disposed of by the taxpayer' for the purposes of section 160ZZK of the *Income Tax Assessment Act 1936*?

1. By paragraph 160ZZK(1)(b), a 'replacement asset' is an asset on which a taxpayer incurred expenditure in acquiring it in place of an 'original asset'. An 'original asset' in terms of paragraph 160ZZK(1)(a) is an asset disposed of, in essence, by way of compulsory acquisition or is lost, destroyed or damaged.
2. Subsection 160ZZK(7) contains two alternate tests for deeming an asset to have been acquired in replacement of an asset disposed of by a taxpayer for the purposes of section 160ZZK. The appropriate test depends on whether or not the asset that was lost, destroyed or compulsorily acquired was, immediately before its disposal, used in a business carried on by the taxpayer.
3. **Business asset test:** If an original asset was used in a business immediately before its disposal, any asset acquired in replacement of it must be used in that business for a reasonable time after acquisition to be regarded as a 'replacement asset'. Rollover relief under section 160ZZK is not available, however, if the replacement asset is trading stock immediately after its acquisition (paragraph 160ZZK(1)(ba)).
4. **Non business asset test:** If an original asset was not used in a business immediately before its disposal, any asset acquired in replacement of it must be used for the same or a similar purpose for a reasonable time after acquisition to be regarded as a 'replacement asset'.
5. An improvement to an existing asset does not constitute a 'replacement asset' unless the improvement is deemed, for example by section 160P, to be a separate asset and otherwise satisfies the relevant replacement asset test.
6. There is no restriction on the number of assets that may treated as replacements for an original asset provided that they each satisfy the relevant replacement asset test.
7. TD 4 is now withdrawn. To the extent to which our views in that Determination still apply, they have been incorporated in this Determination.

X Ltd owns land on which it conducts a manufacturing business. The State Government compulsorily acquires a portion of that land and pays X Ltd \$1 million. X Ltd uses the money within 12 months to:

- (a) acquire machinery to be used in the manufacturing business; or
- (b) acquire machinery to be used in a real estate business that X Ltd conducts; or
- (c) acquire trading stock for the manufacturing business.

*For the purposes of section 160ZZK, X Ltd has acquired a replacement asset in case (a) but not case (b). In case (a) even though the replacement asset is different from the original asset it is to be used in the same business as the original asset. In case (b) the replacement asset is to be used in a different business from the original asset. In case (c) rollover relief is **not** available in relation to the replacement asset as it constitutes trading stock.*

Example 2

Yorick owns a house that has been used to produce rental income. The house has, for capital gains tax purposes, been treated as an asset separate from the land on which it is situated because of the operation of subsection 160P(4). The house is destroyed by fire and insurance proceeds are used within 12 months to:

- (a) build on the same site a block of units which is used for rental purposes; or
- (b) build on a different site a house which is used for rental purposes; or
- (c) acquire an existing house and land which is used for rental purposes; or
- (d) acquire shares in a public company which are used to derive dividends.

For the purposes of section 160ZZK, Yorick has acquired a replacement asset in cases (a), (b) and (c) but not (d). In cases (a) and (b), Yorick has incurred expenditure in acquiring an asset (because of the operation of subsection 160P(4)) and each new asset is used for a similar purpose to that for which the original asset was used. In case (c), even if the house and land are treated as separate assets for capital gains tax purposes, they are both used for the same purpose as the original asset. In case (d), the asset is not used for the same purpose to that for which the original asset was used.

Example 3

Zoe owns a holiday home which is not used for income producing purposes and is therefore not treated as an asset separate from the land. The home is destroyed by a cyclone. The insurance proceeds are used within 12 months to build a replacement holiday home on the site. In this case, Zoe has not acquired a 'replacement asset' as the building is merely an improvement to the land. However, the money has been used to restore the original asset in terms of paragraph 160ZZK(1)(b) and still qualifies for rollover relief under section 160ZZK.

Commissioner of Taxation

8/9/94

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