

TD 36W - Capital gains: when is a renewal of a statutory licence 'wholly or principally attributable to' the taxpayer's ownership of the original licence?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *15 October 2008*



Notice of Withdrawal

Taxation Determination

Capital gains: when is a renewal of a statutory licence 'wholly or principally attributable to' the taxpayer's ownership of the original licence?

CGT Determination Number 36 is withdrawn with effect from today.

1. CGT Determination Number 36 (TD 36) clarified that a further requirement for capital gains tax (CGT) rollover to be available under section 160ZZPE of the *Income Tax Assessment Act 1936* (ITAA 1936) was that the renewal of a statutory licence must be 'wholly or principally attributable to' the ownership of the original licence. This requirement would be satisfied if the taxpayer's ownership of the original licence was the sole or primary reason for being granted the fresh licence.
2. Section 160ZZPE of the ITAA 1936 was rewritten as Subdivision 124-C of the *Income Tax Assessment Act 1997* (ITAA 1997). The requirement that the statutory licence renewal must be attributable to ownership of the original licence remained. This was clear by the use of the words 'due mainly to' expressed in paragraph 124-140(1)(b) of the ITAA 1997.
3. Subsequent amendments to Subdivision 124-C of the ITAA 1997 by *Taxation Laws Amendment (2007 Measures No. 5) Act 2007* with effect from the 2006-07 income year changed the conditions for CGT rollover. Relevantly, subsection 124-140(1) was repealed and substituted by a new subsection. As a result, the issue dealt with in TD 36 is no longer relevant.
4. Accordingly, TD 36 has no future application and is therefore withdrawn.

Commissioner of Taxation
15 October 2008

ATO references

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