TD 2000/41A - Addendum - Income tax: capital gains: are the two requirements in subsection 124-75(4) of the Income Tax Assessment Act 1997 for a CGT asset acquired to replace an original asset alternative and mutually exclusive requirements?

Addendum

Taxation Determination

Income tax: capital gains: are the two requirements in subsection 124-75(4) of the *Income Tax Assessment Act 1997* for a CGT asset acquired to replace an original asset alternative and mutually exclusive requirements?

This Addendum amends Taxation Determination TD 2000/41 to reflect changes that were made to section 124-75 of the *Income Tax Assessment Act 1997* (ITAA 1997) (about other requirements to obtain roll-over if you receive money for the CGT event happening) by *New Business Tax System (Capital Allowances – Transitional and Consequential) Act 2001* and *Taxation Laws Amendment Act (No. 5) 2002*.

Those changes, applying to CGT events happening on or after 1 July 2001, had the effect of excluding depreciating assets whose decline in value is worked out under Division 40 of the ITAA 1997, or for which a deduction is claimed under Division 328 of the ITAA 1997, from being replacement assets for the purposes of rollover relief under Subdivision 124-B of the ITAA 1997.

Those changes do not affect the answer to the issue raised in this Determination. However, the changes affect the characterisation of assets as replacement assets in the example used in this Determination.

TD 2000/41 is amended as follows:

1. Paragraph 15

After the paragraph, insert:

> 16. *In relation to Example 1 at paragraph 14 of this Determination, where the compulsory acquisition by the State Government (the relevant CGT event in this case) happens on or after 1 July 2001, the machinery no longer qualifies as a replacement asset for the purposes of the Subdivision 124-B rollover (see paragraph 124-75(2)(a) of the ITAA 1997). This is because the machinery is a depreciating asset whose decline in value is worked out under Division 40 of the ITAA 1997. Therefore, even if X Ltd has satisfied the business asset test in case (a), it has not acquired a replacement asset. Similarly, in respect of case (b), X Ltd has not acquired a replacement asset because apart from failing the tests in*

subsection 124-75(4) of the ITAA 1997, it has also failed the test in paragraph 124-75(2)(a).

2. Legislative references

Insert:

- ITAA 1997 Div 40
- ITAA 1997 124-75(2)(a)

This Addendum applies from 1 July 2001 which is the date of effect of the legislative change to section 124-75 of the ITAA 1997 referred to above.

Commissioner of Taxation
4 July 2007

ATO references
NO: 2006/20258
ISSN: 1038-8982
ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ capital proceeds