


IT 2215 - Income Tax: leasing of works of art

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TAXATION RULING NO. IT 2215

INCOME TAX: LEASING OF WORKS OF ART

F.O.I. EMBARGO: May be released

REF H.O. REF: 85/4100-1 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1205231	LEASING OF WORKS OF ART	51(1)
	SHORT TERM LEASES	57AG
	SALE BY INSTALMENTS	57AL

OTHER RULINGS ON TOPIC IT 28, IT 174

PREAMBLE In recent times some publicity has been given to the fact that there has been an increase in the leasing of works of art by art galleries. Lessees are said to be self-employed persons deriving substantial assessable income.

2. Under the leasing arrangements reported a lessee has the option or right, at the conclusion of the lease term which may be for periods ranging from 24 to 48 months, to purchase the work of art at 10% of its initial nominated purchase price. The arrangement is offered as an alternative to immediate purchase.

3. The publicity reports suggest that, where leased works of art are used in business premises, the payments made during the term of the lease and before acquisition will be allowable as income tax deductions under sub-section 51(1) of the Income Tax Assessment Act. Leasing, it is suggested, would give substantial income tax advantages as against outright purchase - a purchaser would be entitled only to depreciation on the work of art at ordinary rates. Paragraph 57AL(2)(b) specifically excludes works of art from the accelerated rates of depreciation provided in sub-section 57AL(4).

RULING 4. In determining the income tax consequences of payments made in an agreement for the lease of a work of art regard must be had to Taxation Ruling No. IT 28 dealing with leasing arrangements of plant and machinery. As that Ruling indicates the basic question for decision is whether the particular arrangement is, in practical effect, an ordinary commercial lease entered into in the normal course of business or whether it is, in effect, an agreement for the purchase of property. Where the arrangement constitutes an ordinary commercial lease, the lease payments would qualify for income tax deduction. On the other hand, if the arrangements are considered to represent an agreement for the purchase of property, the payments would be of a capital nature.

5. In terms of Taxation Ruling No. IT 28, if an arrangement for the lease of a work of art is such as to confer on the lessee an option or right whereby the property in the work of art would pass to the lessee or his nominee or agent

from the lessor at any point of time, the arrangement would be regarded as a contract for the sale of goods. In this event, the payments would be outgoings of a capital nature not deductible for income tax purposes.

COMMISSIONER OF TAXATION

14 November 1985

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