TD 47 - Capital Gains: What are the CGT consequences where a fixture which was regarded as being owned by the lessee remains affixed to the land at the end of the lease?

This cover sheet is provided for information only. It does not form part of *TD 47 - Capital Gains: What are the CGT consequences where a fixture which was regarded as being owned by the lessee remains affixed to the land at the end of the lease?*

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

CGT Determination Number 47

Capital Gains: What are the CGT consequences where a fixture which was regarded as being owned by the lessee remains affixed to the land at the end of the lease?

Determination

1. An asset will be regarded as being owned by a lessee during the period of the lease, even though it is affixed to the land, where the conditions mentioned in Determination No CGT 46 are met. Where the asset remains affixed to the land at the end of the lease, the owner of the land becomes the owner of the asset.

2. In these circumstances, the lessee has disposed of the asset and the owner of the land (the lessor) has acquired it. The date of disposal and acquisition is the time when the change in ownership occurs. Depending on the lease agreement and relevant law, this could be at the expiry of a reasonable time after the end of the lease in which the asset is to be removed, or it could be the end of the lease [subsection 160U(4)].

3. Where an amount is paid by the lessor to the lessee for the asset, that amount will generally be the consideration received by the lessee for the disposal and paid by the lessor for the acquisition. However, where no consideration or inadequate consideration (and the parties are not dealing at arm's length) is given, subsections 160ZD(2) and 160ZH(9) may apply to deem the market value of the asset to have been received and given.

4. An asset affixed to residential property may have been a non-listed personal-use asset of the lessee. If it is, sections 160ZE and 160ZG may apply if the consideration received for the asset and/or its cost base (or indexed cost base) are less than $5,000.

COMMISSIONER OF TAXATION
5 March 1992

FOI INDEX DETAIL: Reference No. CGT 47

Subject Ref: Tenant's fixtures; disposal and acquisition of asset

Legislative Ref:160ZD(2);160ZH(9);160ZE;160ZG;160U(4) ATO Ref: N.O.88/3728-7; CGT46;CGT48

ISSN 1037 - 1419