TD 54 - Capital Gains: What value is given to leased equipment for the purpose of section 160ZZT?

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 54

Capital Gains: What value is given to leased equipment for the purpose of section 160ZZT?

Determination

1. The appropriate value to be attributed to leased equipment is the market value of the lease and not the capitalised value of the underlying equipment.

2. The market value of the lease would be the amount for which the lessee could dispose of the lease at arm's length.

Note: If an arrangement is to be accepted as a lease for income tax purposes the lessee can have no right, express or implied, to purchase the leased equipment at the expiry of the lease (IT 28).

Example:

A taxpayer owns all the shares in a private company. The shares were acquired before 20 September 1985.

In July 1990, the company leased equipment valued at $800,000, to which it had no residual entitlement at the end of the lease. No premium was charged in respect of the lease.

In August 1991, when the market value of the lease was $100,000, the taxpayer disposed of the shares in the company for $170,000. (At this time, the value of the underlying equipment was $1,200,000). The other assets of the company are a block of land acquired in June 1986 for $20,000 (valued at $30,000 in August 1991) and a block of land acquired in December 1984 for $50,000 (valued at $40,000 in August 1991).

The "net worth" of the company is $170,000 and as the value of the lease and the land acquired in June 1986 is not less than 75% of the "net worth", section 160ZZT has possible application.

If the indexed cost base of the block of land acquired in June 1986 is $28,000, and the indexed cost base of the lease is nil, section 160ZZT deems the taxpayer to have a capital gain of $102,000 i.e. the value of the land acquired in June 1986 and the value of the lease less the sum of their indexed cost bases.

COMMISSIONER OF TAXATION
26 March 1992

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