


TD 2003/D3 - Income tax: is the addition of a nominal amount to the price of hired goods sufficient to satisfy the requirement in subparagraph (a)(ii) of the definition of 'hire purchase agreement' in subsection 995-1(1) of the Income Tax Assessment Act 1997 ('the Act') and so bring the hiring arrangement within the treatment under Division 240?

 This cover sheet is provided for information only. It does not form part of *TD 2003/D3 - Income tax: is the addition of a nominal amount to the price of hired goods sufficient to satisfy the requirement in subparagraph (a)(ii) of the definition of 'hire purchase agreement' in subsection 995-1(1) of the Income Tax Assessment Act 1997 ('the Act') and so bring the hiring arrangement within the treatment under Division 240?*

This document has been finalised by TD 2003/17.

Draft Taxation Determination

Income tax: is the addition of a nominal amount to the price of hired goods sufficient to satisfy the requirement in subparagraph (a)(ii) of the definition of ‘hire purchase agreement’ in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (‘the Act’) and so bring the hiring arrangement within the treatment under Division 240?

Preamble

Draft Taxation Determinations (DTDs) represent the preliminary, though considered, views of the Australian Taxation Office. DTDs may not be relied on by taxpayers and practitioners. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.

1. No.
2. Division 240 of the Act deals with hire purchase agreements (as defined). The broad scheme of the Division is to treat such hire purchase agreements as a sale of the relevant goods to the hirer (‘notional buyer’), combined with a loan from the supplier (‘notional seller’) to the notional buyer. Among other things, the Division treats the notional buyer as the owner of the goods for certain purposes and treats as interest the payments made by the notional buyer to the extent they exceed the price of the goods.
3. A contract meets the paragraph (a) definition of ‘hire purchase agreement’ in subsection 995-1(1) of the Act if, among other things, ‘the charge that is or may be made for the hire, together with any other amount payable under the contract (including an amount to buy the goods or to exercise an option to do so), exceeds the price of the goods’. The excess represents the finance charge component of the contract.
4. Sometimes, the parties to a contract for the use or acquisition of goods may add a nominal or trivial sum to the price of the goods (e.g. by adding one or a few dollars to a price of goods in the order of hundreds of thousands or millions of dollars). That might be done for the purpose of bringing the contract within the terms of the definition of ‘hire purchase agreement’ and, so, within the treatment under Division 240.
5. An example is a contract under which the hirer may, by means of an up-front payment, prepay or defease the rent and purchase option price under the contract. In these circumstances, the amount so paid would be expected to equal the price of the goods that are the subject of the contract. As part of the contract, however, the parties add a nominal or trivial sum to the up-front payment.

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6. The Commissioner considers that the practice discussed in paragraph 4 is a case for the application of the principle that the law is not concerned with trifles (*de minimis non curat lex*). In *Farnell Electronic Components Pty Ltd v. Collector of Customs* (1996) 142 ALR 322, Hill J confirmed that the *de minimis* principle is a principle of statutory interpretation. At 324, he quoted, with approval, the following passage from *Halsbury's Laws of England*, 4th ed, vol 44(1):

De minimis principle. Unless the contrary intention appears, an enactment by implication imports the principle of legal policy expressed in the maxim *de minimis non curat lex* (the law does not concern itself with trifling matters); so if an enactment is expressed to apply to matters of a certain description it will not apply where the description is satisfied only to a very small extent.

7. The principle has been recognised in the application of statutory rules to contracts (for example *Shipton, Anderson & Co v. Weil Brothers & Co* [1912] 1 KB 574 at 577), to criminal law (for example *Williams v. The Queen* (1978) 140 CLR 591 at 602) and in a number of income tax cases (for example *National Mutual Life Association v. FC of T* 70 ATC 4134 at 4137; *J Hammond Investments Pty Limited v. FC of T* 77 ATC 4311 at 4318; *Garrett v. FC of T* 82 ATC 4060 at 4065; *FC of T v. Elton* 90 ATC 4078 at 4082; *Industry Research and Development Board v. Unisys Info Services* 97 ATC 4848 at 4852).

8. The Commissioner does not consider that there is any intention to exclude the *de minimis* principle in the interpretation of the definition of 'hire purchase agreement'. As discussed in paragraph 3, the excess paid over the price of the goods is intended to represent the finance charge under the arrangement. The addition of a nominal or trivial amount to the price of the goods cannot reasonably represent a charge for the provision of finance. In fact, where the payment obligations of the hirer under the agreement are entirely prepaid or defeased by an up-front payment, there is no financing element in the arrangement.

9. What is *de minimis* in any particular case would, of course, depend on all the facts and circumstances including the relative value of the goods concerned. As a guide, an amount added to the price of goods would be considered *de minimis* if it is so low that it could not reasonably be regarded in any sense as a finance charge.

10. The Commissioner would also consider applying Part IVA of the *Income Tax Assessment Act 1936* where an amount has, under a scheme, been added to the price of goods for the sole or dominant purpose of obtaining a tax benefit by bringing a contract within the operation of Division 240.

Date of Effect

11. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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Your comments

12. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by date: 26 March 2003

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Commissioner of Taxation

26 February 2003

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations

TR 92/20

Subject references:

- hire purchase
- finance lease
- *de minimis* principle

Legislative references:

- ITAA 1936 Pt IVA
- ITAA 1997 Div 240
- ITAA 1997 995-1(1)

Case References:

- Farnell Electronic Components Pty Ltd v. Collector of Customs (1996) 142 ALR 322
- Halsbury's Laws of England, 4th ed, vol 44(1)
- Shipton, Anderson & Co v. Weil Brothers & Co [1912] 1 KB 574 at 577
- Williams v. The Queen (1978) 140 CLR 591 at 602
- National Mutual Life Association v. FC of T 70 ATC 4134 at 4137
- J Hammond Investments Pty Limited v. FC of T 77 ATC 4311 at 4318
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ATO References

NO: 2003/001922

ISSN: 1038-8982