TD 93/D158 - Income tax: is a lease acceptable if the lessee or an associate has an option to purchase the shares of, or a controlling interest in, the lessor company?

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This document has been finalised by TD 93/187.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: is a lease acceptable if the lessee or an associate has an option to purchase the shares of, or a controlling interest in, the lessor company?

1. No. IT 28 states that a lease which provides the lessee with an option to purchase the leased goods will be treated as a contract for the sale of the goods. This position was confirmed in IT 2051. IT 28 extended this treatment to arrangements which permitted or enabled the lessee to retain the use of the goods, for example, through the property in the goods passing to the lessee's nominee or agent.

2. It is considered that an arrangement under which the lessee or an associate may gain control of the company which holds the leased goods falls within this category, and hence will not be accepted as a lease. It would correspondingly be unacceptable if the lessor had a right or option to require the lessee or an associate to purchase the shares of, or a controlling interest in, the lessor company.

3. The lease payments will be outgoings of a capital nature which will not be deductible for income tax purposes. The lessee will be entitled to claim depreciation on the leased asset and any interest components of the lease payments.

Commissioner of Taxation
17/6/93

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