# *TR 1999/3 - Income tax: the value for depreciation purposes for a subsequent purchases of a car subject to the section 42-80 luxury car limit*

# Taxation Ruling

## Income tax: the value for depreciation purposes for a subsequent purchaser of a car subject to the section 42-80 luxury car limit

Contents Para



***Preamble***

*The number, subject heading, **Class of person/arrangement**, **Date of effect** and **Ruling** parts of this document are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

# What this Ruling is about

### Class of person/arrangement

1. The class of persons to which this Ruling applies is taxpayers who use cars to produce assessable income.

2. Section 42-80 of the *Income Tax Assessment Act 1997* ('the Act') adjusts the cost price of a car where depreciation is allowable for taxpayers who use cars to produce assessable income. Cars affected by this provision are usually referred to as luxury cars.

3. This Ruling examines the cost of a previously owned (second-hand) luxury car that is used for calculating deductions for depreciation purposes where the car is subject to the monetary limits of section 42-80.

4. This Ruling considers the Commissioner's discretion to limit the cost of a second-hand car to its written down value in the seller's hands plus any actual or notional balancing adjustment that applies to the seller.

5. The Ruling applies only to parties dealing with each other at arm's length. This Ruling does not apply to leased luxury cars. In the case of non-arm's length transactions in respect of leased luxury cars, special rules apply under section 42A-20 in Division 42A of schedule 2E of the *Income Tax Assessment Act 1936* ('the 1936 Act').

**Cross references of provisions**

6. The Tax Law Improvement Program is restructuring, renumbering and rewriting the income tax law in plain language. The Parliament is amending the income tax law progressively to reflect these aims. As new laws come into effect, Taxation Rulings about old laws are being brought into line with them. This Ruling considers the application of sections 42-80 and 42-90 of the Act. Section 42-80 adjusts the car depreciation limit cost in the same manner as that set out in section 57AF of the 1936 Act. Section 42-90 describes the way in which the Commissioner applies the discretion that existed in a similar form in section 60 of the 1936 Act.

# Date of effect

7. This Ruling has both past and future application (see Taxation Ruling TR 92/20). However, it does not have past application where a taxpayer has agreed to settlement of a dispute to the extent that the Ruling is less favourable than the settlement terms. To the extent the Ruling is more favourable, it does not have a past application for the taxation years the subject of the settlement.

# Previous Rulings

8. Taxation Ruling TR 93/24 'Income tax: the value for depreciation purposes for a subsequent purchaser of a motor vehicle subject to the section 57AF luxury car limit' is now withdrawn.

# Ruling

9. Where a previously-owned luxury car is acquired, the cost price for depreciation is the purchase price subject to the section 42-80 limitation.

10. The car depreciation limit in subsection 42-80(1) is calculated by reference to the subsequent purchaser's year of first use and not the original owner's year of first use.

11. This Ruling applies whether or not the car was previously depreciated and whether or not section 57AF of the 1936 Act or section 42-80 of the Act apply to the car.

12. In deciding whether to limit the cost of the second-hand car, the Commissioner must take into account the matters set out in subsection 42-90(4).

# Explanations

13. Section 42-80 provides for a limit on the cost price for depreciation of cars, usually referred to as luxury cars.

14. Subsection 42-80(1) provides that where the cost of a car exceeds the car depreciation limit in the year of first use by the taxpayer, the depreciation allowable is limited to that year's car depreciation limit. The provision relates to the year the taxpayer first owns and uses the car for any purpose. For a subsequent purchaser the fact another taxpayer has already had a year of first use for that same car is irrelevant.

15. In respect of previously depreciated property, the Commissioner accepts the cost price for depreciation purposes as if the purchaser were acquiring the property for the first time, unless section 42-90 applies. Section 42-90 provides the Commissioner with a discretion, in certain circumstances, to limit the cost of previously depreciated property. The matters to be taken into account by the Commissioner in deciding whether to limit the cost of the previously depreciable property are set out in subsection 42-90(4). The fact a car has previously been subject to the limit under either section 57AF or section 42-80 limit would not, of itself, cause the Commissioner to exercise his discretion under section 42-90. Accordingly, the actual cost of the car to the subsequent purchaser would be accepted for depreciation purposes.

# Examples

### Example 1

16. Mr Jones purchased a second-hand 1995 BMW from The Luxury Car Company for $60,000 and first used it during the 1997/1998 financial year. The Luxury Car Company had purchased the car from the previous owner for $50,000 earlier in that year. The Commissioner does not exercise the discretion under section 42-90. Therefore, only the car cost limit in section 42-80 applies to the vehicle and Mr Jones calculates his depreciation deductions based on a depreciable value of $55,134, i.e., the 1997/1998 limit.

### Example 2

17. Ms Happ leases a luxury car, which cost $80,000, from a finance company during the 1992/1993 financial year. Ms Happ, at a public auction, purchases the ex-leased car for $56,000 on 01/07/97.

Ms Happ makes first use of the car, and therefore can claim a deduction for depreciation, in the 1997/1998 financial year. She calculates her depreciation deductions on the 1997/1998 section 42-80 limit of $55,134 because her purchase price is in excess of the statutory limit for that year.

**Example 3**

18. If the same circumstances in **Example 2** exist, except Ms Happ purchases the vehicle for $54,000, depreciation deductions are based on the purchase price of $54,000. The section 42-80 limit is not applicable.

**Commissioner of Taxation**
3 February 1999

*Previous draft:*

No draft issued; previously issued as TR 93/24

*Related Rulings/Determinations:*

*Subject references:*
- cost limit
- depreciated property
- depreciation
- luxury car

*Legislative references:*
- ITAA36 57AF
- ITAA36 60
- ITAA36 Sched 2E
- ITAA36 Div 42A
- ITAA36 42A-20
- ITAA97 42-80
- ITAA97 42-90
- ITAA97 42-90(4)

*Case references:*

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