Status: **legally binding**

Product Ruling

Future Rent Capital Pty Ltd – lease (transfer of rental income)

Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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No guarantee of commercial success

The Commissioner **does not** sanction or guarantee this product. Further, the Commissioner gives no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. The Commissioner recommends a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the scheme is carried out in accordance with the information we have been given, and have described below in the **Scheme** part of this document. If the scheme is not carried out as described, participants lose the protection of this Product Ruling.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the entity(s) who applied for the Product Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Product Ruling.

Status: **legally binding**

What this Ruling is about

1. This Product Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified in the Ruling section apply to the defined class of entities that participates in the scheme to which this Product Ruling relates. All legislative references in this Product Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

2. In this Product Ruling, the scheme involves entry into either a concurrent lease with Future Rent Capital Pty Ltd (Future Rent) over a property (the Property) that is subject to a current residential tenancy agreement or a head lease with Future Rent over the Property that allows Future Rent to grant a residential tenancy agreement to prospective tenants.[1]

3. This Product Ruling does not address:

- the Owner's tax obligations and benefits in relation to the acquisition, holding and sale of the Property
- for the purposes of section 104-10, the reduced cost base of rights assigned to Future Rent by the Owner
- for the purposes of section 104-25, the reduced cost base of the contractual rights of the Owner under a Lease[2] at the time of their discharge or satisfaction
- for the purposes of section 104-110, the expenditure which may be incurred by the Owner to grant a Lease to Future Rent
- the tax consequences on extension of a Lease in the circumstances set out in subparagraph 19(v) of this Product Ruling
- the tax consequences where the Owner nominates another person to receive the Rental Prepayment from Future Rent as set out in subparagraph 19(h) of this Product Ruling, and
- the tax consequences for the Tenant.

Class of entities

4. This part of the Product Ruling specifies which entities can rely on the Ruling section of this Product Ruling and which entities cannot rely on the Ruling section. Those entities that can rely on the Ruling section are referred to as Owners.

5. The class of entities that can rely on the Ruling section of this Product Ruling consists of those entities that enter into the scheme described in paragraphs 16 to 20 of this Product Ruling on or after 1 July 2022 and on or before 30 June 2025.

6. The class of entities that can rely on the Ruling section of this Product Ruling does **not** include entities that are:

- non-residents for Australian tax purposes, or
- accepted to participate in the scheme described in paragraphs 16 to 20 of this Product Ruling before 1 July 2022 or after 30 June 2025.

[1] Unless otherwise defined, capitalised terms in this Product Ruling take their meaning from either or both the Concurrent Lease and Head Lease referred to in paragraph 16 of this Product Ruling, as appropriate.
[2] All references to 'Lease' in this Product Ruing are a reference to either or both of the Concurrent Lease or Head Lease referred to in paragraph 16 of this Product Ruling.

Status: **legally binding**

Superannuation Industry (Supervision) Act 1993

7. This Product Ruling does not address the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA). The Commissioner gives no assurance that the scheme is an appropriate investment for a superannuation fund. The trustees of superannuation funds are advised that no consideration has been given in this Product Ruling as to whether investment in this scheme may contravene the provisions of the SISA.

Qualifications

8. The class of entities defined in this Product Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 16 to 20 of this Product Ruling.

9. If the scheme actually carried out is materially different from the scheme that is described in this Product Ruling, then this Product Ruling:

- has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- may be withdrawn or modified.

Date of effect

10. This Product Ruling applies from 1 July 2022. It applies only to the specified class of entities that enter into the scheme from 1 July 2022 until 30 June 2025, being its period of application. This Product Ruling will continue to apply to those entities even after its period of application has ended for the scheme entered into during the period of application.

11. However, the Product Ruling only applies to the extent that there is no change in the scheme or in the entity's involvement in the scheme.

Changes in the law

12. Although this Product Ruling deals with the income tax laws enacted at the time it was issued, later amendments may impact on this Product Ruling. Any such changes will take precedence over the application of this Product Ruling and, to that extent, this Product Ruling will have no effect.

13. Entities that participate in the scheme are advised to confirm with their tax adviser that changes in the law have not affected this Product Ruling since it was issued.

Note to promoters and advisers

14. Product Rulings were introduced for the purpose of providing certainty about tax consequences for entities in schemes such as this. In keeping with that intention, the Commissioner suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Product Ruling has issued.

Status: **legally binding**

Ruling

15. Subject to paragraph 3 of this Product Ruling and the assumptions in paragraph 20 of this Product Ruling:

(a) The Rental Prepayment from Future Rent to the Owner will be assessable to the Owner as ordinary income under section 6-5 on an accruals basis over the term of the Lease (that is, the period for which the payment is made).

(b) The amount of the Rental Prepayment taken to have accrued to the Owner during an income year is that amount which has

(i) ceased to be subject to Future Rent's right to the Rental Refund Amount, and

(ii) not been included as assessable income in a prior income year.

(c) The Additional Rent from Future Rent to the Managing Agent (on the Owner's behalf) will be assessable to the Owner as ordinary income under section 6-5 on a receipts basis (that is, at the time it is paid to the Managing Agent).

(d) Any Management and Administration Fee incurred by the Owner under the Lease will be deductible under section 8-1 in the income year it is incurred.

(e) An amount paid by the Owner to reimburse Future Rent for any Rectification Costs incurred by Future Rent under the Lease will be deductible under section 8-1 in the income year incurred.

(f) The Owner will not make a capital gain under subsection 104-110(3) on the grant of the Lease to Future Rent.

(g) The Owner will not make a capital gain under subsection 104-10(4) on assignment of their Owner Rights to Future Rent under the Concurrent Lease or the assignment of their rights under the Existing Management Agreement to Future Rent under the Head Lease.

(h) CGT Event C2 under section 104-25 will happen to the Owner on discharge or satisfaction of their contractual rights under the Lease (at the time of surrender or termination of the Lease).

(i) Should the Lease constitute a financial arrangement for the purposes of Division 230, it would be the subject of an exception to the application of that Division pursuant to paragraph 230-460(2)(d) as an arrangement that, in substance or effect, depends on the use of the Property (an asset that is real property) and gives Future Rent a right to control the use of the Property.

(j) The supply of the Property by the Owner by way of the Lease will be input taxed pursuant to section 40-35 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

(k) Provided the scheme ruled on is entered into and carried out as described in this Product Ruling, the anti-avoidance provisions in Part IVA of the *Income Tax Assessment Act 1936* will not apply to the Owner in respect of their entry into the Lease.

Scheme

16. The scheme that is the subject of this Product Ruling is identified and described in the following:

- application for a Product Ruling as constituted by information and documentation, received on 16 November 2022
- Concurrent lease (transfer of rental income) (the Concurrent Lease), received on 16 November 2022, and
- Head lease (transfer of rental income) (the Head Lease), received on 16 November 2022.

Note: Certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

17. For the purposes of describing the scheme to which this Product Ruling applies, there are no other agreements, whether formal or informal, and whether or not legally enforceable, which an Owner or an associate of an Owner, will be a party to, which are a part of the scheme.

18. All Australian Securities and Investments Commission requirements are, or will be, complied with for the term of the agreements.

Overview

19. Following is a summary of the scheme:

(a) Future Rent will enter into

(i) concurrent leases, as the concurrent lessee, with residential landlords (the Owners), pursuant to which Future Rent will accept a lease of properties in Australia that are subject to a current residential tenancy agreement as at the Commencing Date (an Existing Lease), and

(ii) where there is no Tenant in occupation of the Property at the time, head leases, as the head lessee, with owners of properties in Australia (the Owners), pursuant to which Future Rent, as sub-lessor, will be entitled grant a residential lease to prospective tenants at any time on and from the Commencing Date (a Residential Lease).

(b) Pursuant to the terms of the Concurrent Lease and at all times during the Lease Term, Future Rent

(i) acknowledges that each Concurrent Lease is granted to Future Rent by the Owner subject to and concurrent with the Existing Lease

(ii) is entitled to collect any rent payable by the Tenant to the Owner (as the lessor) under the Residential Lease[3]

[3] In the context of the Concurrent Lease, the Residential Lease means the Existing Lease and any future underlying leases which commence at the expiry of the Existing Lease with the existing or new tenants.

(iii) is not entitled to occupy the Property (with the right to exclusive possession to the Property being retained by the Tenant) except to the extent necessary for Future Rent to be able to grant a new Residential Lease

(iv) must only use the Property to collect rent from the Residential Lease (the Permitted Use)

(v) must comply with all obligations imposed on the Owner under the Residential Lease (except for the obligations referred to in subparagraph 19(f) of this Product Ruling) and is entitled to enforce all rights and remedies of the Owner under the Residential Lease, and

(vi) has the right to vary and, where appropriate, terminate or enter into any new Residential Lease or appoint a new property manager (Managing Agent).

(c) Pursuant to the terms of the Head Lease and at all times during the Lease Term, Future Rent

(i) may grant a Residential Lease at any time on and from the Commencing Date and give the Owner an opportunity to propose the commercial terms of such Residential Lease

(ii) is entitled to collect any rent payable by the Tenant under the Residential Lease

(iii) is entitled to possession of the Property to the extent necessary for Future Rent to be able to grant a Residential Lease

(iv) must only use the Property for the Permitted Use

(v) must comply with all obligations imposed on the lessor under the Residential Lease (except for the obligations referred to in subparagraph 19(f) of this Product Ruling) and is entitled to enforce all rights and remedies of the lessor under the Residential Lease, and

(vi) has the right to vary and, where appropriate, terminate or enter into any new Residential Lease or appoint a new Managing Agent.

(d) To the extent that the Concurrent Lease does not put Future Rent, during the Lease Term, in the same position as the Owner under the Existing Lease in terms of enforcing all of the covenants, obligations and undertakings given to the Owner in connection with or under the Existing Management Agreement and Existing Lease (the Owner Rights), then

(i) the Owner assigns to Future Rent the benefit of all lessee covenants in the Existing Lease and all of its rights under the Existing Management Agreement to the extent that it relates to the Property, and

(ii) to the extent that any of the Owner Rights are not assignable, the Owner holds the benefit of the relevant Owner Right for the benefit of Future Rent, and if directed by Future Rent must enforce the relevant Owner Right for Future Rent.

(e) To the extent permitted and effective pursuant to the terms of the Head Lease, the Owner assigns to Future Rent all of its rights under the Existing Management Agreement to the extent that it relates to the Property.

(f) The Owner's obligations in the Residential Lease relating to payment of Property Costs (that is, costs in respect of the ownership, management, operation, maintenance, use and occupation of the Property) and repair, maintenance and works on the Property remain the responsibility of the Owner to the extent they arise during the Lease Term.

(g) Pursuant to the terms of the Lease, the Owner

(i) must keep the Property in good repair and condition to the extent required under the Residential Lease

(ii) remains responsible for paying any fees to the Managing Agent

(iii) is liable to reimburse Future Rent for any Rectification Costs (that is, costs incurred by Future Rent as a result of it electing to remedy any default by the Owner under the Lease)

(iv) must direct the Managing Agent to promptly secure a new tenant under a new Residential Lease when the prevailing Residential Lease is due to terminate or expire

(v) must pay a Management and Administration Fee, if any, to Future Rent at the end of the Lease Term for their services in reviewing and processing the Owner's application for entry into the Lease, and

(vi) is entitled to be paid the Concurrent Lease Rent or the Head Lease Rent (as applicable) by Future Rent, being the sum of the Rental Prepayment and the Additional Rent.

(h) The Rental Prepayment, payable to the Owner (or to a person nominated by the Owner in writing) within 7 days after the Commencing Date, is a prepayment of rent which is less than the expected Residential Net Rent or Proposed Agreed Amount (as applicable) that Future Rent expects to receive under the Residential Lease.

(i) Future Rent will offer the Owner the option of receiving a Rental Prepayment that is calculated on the basis of the Residential Gross Rent for a period of one or 2 years.

(j) The Residential Net Rent or the Proposed Agreed Amount (as applicable) is the estimated total of all amounts expected to be collected under the Residential Lease during the Expected Term (the Residential Gross Rent) less the estimated total of the Additional Rent expected to be paid during the Expected Term.

(k) The Additional Rent, payable by Future Rent on the Owner's behalf to the Managing Agent on the first day of each month (or as soon as practicable), is calculated as a fixed percentage of the actual rent collected from the Tenant by the Managing Agent on behalf of Future Rent under the Residential Lease.

(l) The Additional Rent payable by Future Rent will first be set off by Future Rent against any outstanding Rectification Costs in respect of which the Owner is liable to reimburse Future Rent.

(m) The Owner irrevocably instructs the Managing Agent to use the amount paid by Future Rent as Additional Rent, together with any additional amounts standing to the credit of the Owner in the Agent's Trust Account, on the Owner's behalf, to pay

(i) the Costs of all of the obligations of the Owner in respect of the Property and the Residential Lease under the Lease (the Owner Retained Obligations) and any outstanding Rectification Costs, as and when they fall due, and

(ii) at the end of each month, any balance to the Owner (subject to a contrary instruction from the Owner).

(n) The default term of each Lease will be 3 years. Where the term of the Concurrent Lease exceeds the term of the Existing Lease, Future Rent may enter into a new Residential Lease.

(o) The Lease will be surrendered when either

(i) the rent collected by Future Rent under the Residential Lease less any Additional Rent paid to the Owner (the Actual Net Collections) equal or exceed the Residential Net Rent or Proposed Agreed Amount (as applicable) and there are no outstanding Rectification Costs, or

(ii) the Owner requires Future Rent to surrender the Lease by written notice and the Owner has met its obligations under the Lease.

(p) Where the Property, or any part of it, is damaged, destroyed or rendered substantially inaccessible so that it is wholly or substantially unfit for occupation and use of the Tenant, the Owner is required to claim on any insurance and either reinstate the Property within a reasonable time or require Future Rent to surrender the Lease.

(q) Immediately upon surrender of the Lease in the circumstances set out in subparagraphs 19(o) or (p) of this Product Ruling, the Owner becomes the landlord under any current Residential Lease.

(r) The Lease may be terminated

(i) by Future Rent upon occurrence of a Default Event and notice to the Owner, or

(ii) by either Future Rent or the Owner where the Property is resumed to the extent that it is no longer wholly or substantially fit as a residence.

(s) At the end of the Lease Term, by surrender or termination and to the extent permitted and effective, Future Rent assigns to the Owner the benefit of all lessee covenants in any current Residential Lease.

(t) The Owner must refund to Future Rent a portion of the Rental Prepayment (if any), referred to as the Rental Refund Amount, where

(i) the Owner exercises its unqualified right to require Future Rent to surrender the Lease, as per sub-subparagraph 19(o)(ii) of this Product Ruling (including in the circumstances set out in subparagraph 19(p) of this Product Ruling), or

(ii) the Lease is terminated under either circumstance set out in subparagraph 19(r) of this Product Ruling.

(u) Where the Rental Prepayment is calculated on the basis of the Residential Gross Rent for a period of 2 years, the Rental Refund Amount amortises to nil over the term of the Lease. Where the Rental Prepayment is calculated on the basis of the Residential Gross Rent for a period of one year, the Rental Refund Amount amortises to nil over 1.5, 2 or 3 years, at the Owner's election.

(v) The term of a Lease will be extended beyond its 3-year term where, as at the Expiry Date, either the Actual Net Collections are less than the Residential Net Rent or Proposed Agreed Amount (as applicable) or any Rectification Costs are outstanding. Where this occurs, the Lease will continue on a monthly basis at a rental equal to $1 per month until either Future Rent chooses to terminate, or such time as the Actual Net Collections equal or exceed the Residential Net Rent or Proposed Agreed Amount (as applicable) and there are no outstanding Rectification Costs.

Assumptions

20. This Product Ruling is made on the basis of the following necessary assumptions:

(a) The Owner is an Australian resident for tax purposes.

(b) Any Rectification Costs incurred by Future Rent are incurred to remedy the Owner's failure to repair the Property (or part of the Property) and would have been deductible to the Owner under section 25-10 had they been incurred by the Owner.

(c) The Property constitutes 'residential premises' (as defined in section 195-1 of the GST Act) and is not 'commercial residential premises' (as defined in section 195-1 of the GST Act).

(d) The Property is used predominantly for residential accommodation.

(e) The Owner Rights and, in the context of the Head Lease, the Owner's rights under the Existing Management Agreement will have a market value of nil at the time of their assignment by the Owner to Future Rent.

(f) The Owner's rights under the Lease will have a negligible market value at the time of their discharge or satisfaction on surrender or termination of the Lease.

(g) The scheme will be executed in the manner described in the Scheme section of this Product Ruling and the Concurrent Lease or Head Lease referred to in paragraph 16 of this Product Ruling.

(h) All dealings between the Owner, Future Rent, the Tenant and the Managing Agent will be at arm's length.

Commissioner of Taxation
24 May 2023

Status: **not legally binding**

Appendix – Explanation

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

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Assessability of Concurrent Lease Rent and Head Lease Rent

21. Section 6-5 includes income according to ordinary concepts (ordinary income) in assessable income. Whether or not a particular amount is income according to ordinary concepts depends on the nature and character of the receipt in the hands of the taxpayer. Rental income is regarded as ordinary assessable income.

22. Pursuant to subsection 6-5(2), ordinary income is included in the assessable income of an Owner when it is derived by that Owner. The word 'derived' is not defined under the *Income Tax Assessment Act 1997* but is equivalent to 'arising or accruing' (*Harding v Federal Commissioner of Taxation* [1917] HCA 13). Income is taken to be derived when it has 'come home' to the Owner; that is to say it has been earned and, depending on the nature of the source of the income, there is sufficient certainty as to its being realised (*Commissioner of Taxes (SA) v Executor Trustee and Agency Company of South Australia Limited* [1938] HCA 69 (*Carden's case*). Such certainty is determined by reference to not only legal rights and obligations but also business and commercial realities (*Arthur Murray (NSW) Pty Ltd v Commissioner of Taxation (Cth)* [1965] HCA 58).

23. The time at which an amount represents 'income derived' by an Owner depends on the nature of the income and the circumstances in which it is derived. Further, the accounting method to be used in determining when income is derived depends on its 'actual appropriateness' and, in particular, on 'whether in the circumstances of the case it is calculated to give a substantially correct reflex of the taxpayer's true income' (*Carden's case*).

24. The appropriate accounting method to be used to account for a prepayment of rent as ordinary income has been considered by the Taxation Board of Review. In *Case B47* 70 ATC 236, the Taxation Board of Review, by majority, found that the prepaid rent under the lease in question, which provided for the repayment by the lessor to the lessee of any unexpired proportion of rent calculated at a weekly rate where the lease was terminated other than in the case of the lessee's default or breach, did not come home to the lessor when received by them so as to constitute income derived at the time of receipt, and should be apportioned over the term of the lease.

25. That decision was distinguishable from that held by the Taxation Board of Review in *Case 51* 70 ATC 253 where the lessor, having received the rent in advance per the terms of the lease agreement in question, was under no obligation to refund any part of it. In this case, the Taxation Board of Review concluded that there was no ground for a view that the lessor did not derive the whole of the rent when it was paid to them.

26. The existence (or otherwise) of the lessee's right to a pro rata refund for the unexpired portion of the term was emphasised as the critical feature in both cases. The Commissioner similarly confirmed in Taxation Ruling TR 2002/14 *Income tax: taxation of retirement village operators* that rent, paid by a resident granted a lease in a retirement village, in advance and subject to a pro rata refund upon early termination of the lease, should be brought to account over the period for which the payment is made.

27. As per subparagraph 19(t) of this Product Ruling, the Lease requires the Owner to refund the Rental Refund Amount (being a portion of the Rental Prepayment) on early surrender or termination of the Lease (other than a surrender under the circumstances set out in sub-subparagraph 19(o)(i) of this Product Ruling). The Rental Refund Amount lessens over the term of the Concurrent Lease as rent is collected by Future Rent under the Residential Lease.

28. The existence of this broad right of refund under the Lease means that the Rental Prepayment paid by Future Rent to the Owner in advance for the Permitted Use over the fixed Lease Term does not 'come home' to the Owner in a realised or immediately realisable form (that is, is not derived) at the time of receipt. Accounting for the Rental Prepayment as assessable ordinary income on an accruals basis over the term of the Lease, as and when it periodically and proportionately ceases to be subject to the refund right, will provide the most substantially correct reflex of that income for the Owner.

29. The Additional Rent paid to the Managing Agent on behalf of the Owner by Future Rent on a monthly basis is not refundable, and will have come home to the Owner in a realised or immediately realisable form (that is, be derived) at that time.

Deductibility of amounts incurred by the Owner

30. A loss or outgoing is deductible under section 8-1 if its essential character is that of expenditure that has a sufficient connection with the operations or activities which more directly gain or produce a taxpayer's assessable income, provided that the expenditure is not of a capital, private or domestic nature.

31. Any Management and Administration Fee incurred by the Owner under the Lease is paid for Future Rent's time and resources in reviewing and processing the Owner's Lease application. It has a sufficient connection with the gaining of assessable income or, where applicable, with the carrying on of a business for the purpose of gaining assessable income, being the Concurrent Lease Rent or Head Lease Rent, to be deductible under section 8-1 in the income year in which it is incurred. The Management and Administration Fee is not a payment by the Owner for the surrender or termination of the Lease and is therefore not of a capital nature.

32. Any amounts paid by the Owner to reimburse Future Rent for any Rectification Costs incurred by Future Rent under the Lease are, pursuant to the assumption at subparagraph 20(b) of this Product Ruling, in respect of repairs to the Property (or part of the Property) from which the Owner is deriving assessable Concurrent Lease Rent or Head Lease Rent, and therefore have a sufficient connection with the gaining of assessable income or, where applicable, with the carrying on of a business for the purpose of gaining assessable income, to be deductible under section 8-1 in the income year incurred.

Application of the capital gains tax provisions to the Owner

Grant of the Lease

33. The granting of the Lease by the Owner to Future Rent gives rise to a CGT event F1 under section 104-110 in respect of the Owner.

34. A capital gain from this CGT event may be made if the capital proceeds from the grant of the lease exceed the expenditure incurred to grant it or, alternatively, a capital loss from this CGT event may be made if those capital proceeds are less than the expenditure incurred to grant it (subsection 104-110(3)).

35. The capital proceeds from CGT event F1 are any premium paid or payable for the grant of the lease (subsection 116-20(2)).

36. The Rental Prepayment payable to the Owner is a prepayment of rent (that is, a prepayment for the ongoing use of the Property to collect rent from the Residential Lease during the Lease Term), and not a premium (that is, consideration paid for the grant of the Lease). Factors supporting this conclusion include the:

- existence of the right of refund to a portion of the Rental Refund Amount in a broad set of circumstances, as per subparagraph 19(t) of this Product Ruling (see TR 2002/14)
- existence of the right of abatement in the event the Property is damaged, destroyed or rendered substantially inaccessible, as per subparagraph 19(p) of this Product Ruling, or in the event the Property is resumed to the extent it is no longer wholly or substantially fit as a residence, as per sub-subparagraph 19(r)(ii) of this Product Ruling (see *Frazier v Commissioner of Stamp Duties (NSW)* (1985) 17 ATR 64; 85 ATC 4735, and
- calculation of the Rental Prepayment on the basis of monthly rent of a fixed amount over the Expected Term.

37. On the basis that the Owner will not be paid a premium (capital proceeds) for the grant of the Lease to Future Rent, they will not make a capital gain under subsection 104-110(3) from the CGT event F1.

Assignment of rights

38. Contractual rights under a lease or other agreement (such as the Existing Lease and the Existing Management Agreement) are legally enforceable rights and therefore a CGT asset according to the definition in subsection 108-5(1).

39. An assignment by the Owner of their Owner Rights to Future Rent pursuant to the Concurrent Lease and an assignment by the Owner of their rights under the Existing Management Agreement to Future Rent pursuant to the Head Lease gives rise to CGT event A1 under section 104-10. A capital gain from this CGT event may be made if the capital proceeds from the disposal of the asset are more than the asset's cost base or, alternatively, a capital loss from this CGT event may be made if those capital proceeds are less than the asset's reduced cost base (subsection 104-10(4)).

40. Generally, where no capital proceeds are received from a CGT event the market value substitution rule in subsection 116-30(1) will apply to include the market value of the CGT asset that is the subject of the event (as at the time of the event) as the amount received.

41. As the Owner will not receive any capital proceeds for the assignment of their rights, the Owner will be taken to have received the market value of the rights as at the time of the assignment pursuant to the market value substitution rule.

42. On the basis that the rights have a market value of nil (in accordance with the assumption at subparagraph 20(e) of this Product Ruling), the Owner's capital proceeds from their assignment will be nil and the Owner will not make a capital gain under subsection 104-10(4) from the CGT event A1.

Surrender or termination of the Lease

43. The rights of the Owner under the Lease are legally enforceable rights and therefore, in their totality, a CGT asset according to the definition in subsection 108-5(1).

44. Where the Lease is surrendered or terminated, the Owner's ownership of the contractual rights under the Lease is discharged or satisfied. This discharge or satisfaction of the contractual rights gives rise to CGT event C2 under paragraph 104-25(1)(b).

45. A capital gain from this CGT event may be made if the capital proceeds from the ending of the ownership of the asset are more than the asset's cost base or, alternatively, a capital loss may be made from this CGT event if those capital proceeds are less than the asset's reduced cost base (subsection 104-25(3)).

46. As the Owner will not receive any capital proceeds for the discharge or satisfaction of their rights under the Lease on surrender or termination of the Lease, as the case may be, the Owner will be taken to have received the market value of those rights as at the time of their discharge or satisfaction, and as if the event hadn't occurred and was never proposed to occur, pursuant to the market value substitution rule in subsections 116-30(1) and (3A).

47. On the basis that the Owner's rights under the Lease will have a negligible market value at the time of their discharge or satisfaction (in accordance with the assumption at subparagraph 20(f) of this Product Ruling), the Owner is likely to make a capital loss to the extent to which the reduced cost base of the rights under the Lease exceed their market value.

Application of the goods and services tax provisions to the Owner

48. Goods and services tax (GST) is not payable on a supply that is input taxed (section 40-1 of the GST Act). A supply is input taxed if it is input taxed under Division 40 of the GST Act (paragraph 9-30(2)(a) of the GST Act).

49. Section 40-35 of the GST Act provides that a supply of premises that is by way of lease (other than a long-term lease, as defined in section 195-1 of the GST Act) is input taxed:

- if the supply is of residential premises (other than a supply of commercial residential premises), and
- to the extent that the premises are to be used predominantly for residential accommodation (regardless of the term of occupation).

50. Pursuant to the assumptions at subparagraphs 20(c) and (d) of this Product Ruling, the supply of the Property by the Owner to Future Rent by way of the Lease is input-taxed in accordance with section 40-35 of the GST Act and therefore not one on which GST is payable by the Owner, nor one that gives rise to an entitlement to an input tax credit for anything acquired to make the supply.

Status: **not legally binding**

References

Related Rulings/Determinations:

PR 2018/9; TR 2002/14

Legislative references:

- ITAA 1936 Pt IVA
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