

TD 12W - Capital Gains: What is the consideration for the acquisition of an asset purchased at the expiry of a lease agreement?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *25 January 2017*



Notice of Withdrawal

Taxation Determination

Capital Gains: What is the consideration for the acquisition of an asset purchased at the expiry of a lease agreement?

Capital Gains Tax Determination TD 12 is withdrawn with effect from today.

1. TD 12 concerns the acquisition of an asset upon the expiry of a lease agreement. It states that in most cases the lessor and lessee will be dealing with each other at arm's length. This means that the consideration will be what is actually given, and not the market value, because the market value substitution rule in paragraph 160ZD(2)(c) of the *Income Tax Assessment Act 1936* (ITAA 1936) will not apply.
2. This view was confirmed in *Granby Pty Ltd v. Commissioner of Taxation* (1995) 95 ATC 4240; (1995) 129 ALR 503; (1995) 30 ATR 400. In determining the application of the market value substitution rule in the context of paragraph 160ZH(9)(c) of the ITAA 1936, the Federal Court held that it is not sufficient that the consideration paid from lessor to lessee be greater or less than market value. Rather it must be shown that the parties were also not dealing at arm's length. Subsection 160ZD(2) was rewritten as section 116-30 of the *Income Tax Assessment Act 1997* (ITAA 1997). Section 116-30 of the ITAA 1997 is clear and unambiguous on this point.
3. Therefore TD 12 is being withdrawn without replacement.

Commissioner of Taxation

25 January 2017

ATO references

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