TD 48 - Capital Gains: What are the CGT consequences where a lessee affixes to land an asset and the asset ceases to be owned by the lessee?

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This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

CGT Determination Number 48

Capital Gains: What are the CGT consequences where a lessee affixes to land an asset and the asset ceases to be owned by the lessee?

Determination

1. When an asset owned by a lessee is affixed to land by the lessee, but the lessee is not regarded as continuing to own the asset, the owner of the land becomes the owner of the asset (see CGT46 for circumstances where the lessee will be regarded as the owner).

2. In these circumstances, the lessee has disposed of the asset and the owner of the land has acquired it [paragraph 160M(2)(c)]. The time of acquisition and disposal will generally be when the asset is affixed to the land [subsection 160U(4)].

3. Where an amount is paid by the lessor to the lessee for the asset, that amount will generally be the consideration received by the lessee for the disposal and paid by the lessor for the acquisition. However, where no consideration or inadequate consideration (and the parties are not dealing at arm's length) is given, subsections 160ZD(2) and 160ZH(9) may apply to deem the market value of the asset to have been received and given.

4. An asset affixed to residential property may have been a non-listed personal-use asset of the lessee. If it is, sections 160ZE and 160ZG may apply if the consideration received for the asset and/or its cost base (or indexed cost base) are less than $5,000.

COMMISSIONER OF TAXATION
5 March 1992

FOI INDEX DETAIL: Reference No. CGT 48

Subject Ref: Fixtures to land; disposal and acquisition of an asset

Legislative Ref: 160ZD(2); 160ZH(9); 160ZE; 160ZG; 160M(2)(c); 160U(4)

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