

TD 56 - Capital Gains: What are the CGT consequences of a lessee incurring capital expenditure on improvements to leased property?

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CGT Determination Number 56

Capital Gains: What are the CGT consequences of a lessee incurring capital expenditure on improvements to leased property?

Determination

1. Where a lessee incurs expenditure of a capital nature on making improvements to leased property, the CGT consequences depend upon whether the lessee or the lessor is the owner of the improvements.

IMPROVEMENTS OWNED BY LESSEE

2. In the case where the lessee owns the improvements (see CGT Determination 46), the cost base of those improvements will include the amount of capital expenditure incurred in making the improvements. On the disposal of the improvements, the amount of any consideration received will determine whether a capital gain or loss accrues. Disposal of the improvements will usually occur on the expiry or termination of the lease and the acquiror will generally be the lessor.

3. Where inadequate consideration (and the parties are not dealing at arm's length) or no consideration is given, subsections 160ZD(2) and 160ZH(9) may apply to deem the lessee to have received and the acquiror to have paid market value for the improvements.

IMPROVEMENTS OWNED BY LESSOR

4. In the case where the lessee does not own (and has never owned) the improvements, but the capital expenditure incurred by the lessee enhances the value of the lease, paragraph 160ZH(1)(c) will allow for the expenditure incurred to be included in the cost base of the lease to the lessee.

5. On expiry or termination of the lease, a disposal of the lease occurs and the amount of consideration, if any, will determine whether a capital gain or loss accrues to the lessee (see, in particular, section 160ZV).

COMMISSIONER OF TAXATION

7 May 1992

FOI INDEX DETAIL: Reference No. CGT 56

Subject Ref: Leased property; capital expenditure by lessee; improvements

Legislative Ref: 160ZH(1)(c); 160ZH(9); 160ZD(2); 160ZV.

ATO Ref: ATOTIA PERTH; CGT 46; CGT 47; CGT48

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