


TD 93/D248 - Income tax: do put or call options entered into between a taxpayer and a third party over property owned by the taxpayer, give rise to rights in addition to those in paragraph 51AD(8)(a) of the Income Tax Assessment Act 1936?

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This document has been finalised by TD 94/4.

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Draft Taxation Determination

Income tax: do put or call options entered into between a taxpayer and a third party over property owned by the taxpayer, give rise to rights in addition to those in paragraph 51AD(8)(a) of the *Income Tax Assessment Act 1936*?

1. No. Rights arising from these options constitute rights in relation to the disposal of the whole or a part of the property pursuant to sub-subparagraph 51AD(8)(a)(i)(C).

Example:

A taxpayer X Co., incorporates a special purpose subsidiary company Y Co., whose sole purpose is to finance the construction, ownership and subsequent lease of a commercial building to a tax exempt body for a term of 10 years. To finance the cost of construction, Y Co. borrows money from Bank Co. The terms of the loan stipulate that in the event of default in the repayment of principal or payment of interest by Y Co., Bank Co. has full recourse to all of the assets of Y Co. Y Co. then enters into an arrangement with a third party, Z Co. Under that arrangement, Y Co. is entitled to put the property to Z Co at the time an event of default by Y Co. occurs in meeting its loan obligations to Bank Co.

The rights of Bank Co. as against the taxpayer Y Co. are limited in terms of section 51AD(8). Firstly, Y Co. being a special purpose company, only has assets that comprise the property and the income generated by the use of that property. The rights of Bank Co. as against Y Co. are therefore capable of being limited to the rights in subparagraph 51AD(8)(a)(i) by virtue of subparagraph 51AD(8)(b)(i).

Secondly, any argument that the money that may be paid by Z Co. upon the exercise of the put option by Y Co., is an additional asset of Y Co. to which Bank Co. can have recourse, is fallacious. The rights arising from the put option are merely rights in relation to the property, being rights arising from taxpayer's disposal of the property in terms of sub-subparagraph 51AD(8)(a)(i)(C).

Commissioner of Taxation
23/9/93

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