


TD 93/D273 - Income tax: does section 82KZM apply to a prepayment equal to 12 months lease instalments where the payment does not reduce subsequent lease instalments?

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This document has been finalised by TD 94/7.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: does section 82KZM apply to a prepayment equal to 12 months lease instalments where the payment does not reduce subsequent lease instalments?

1. No. Section 82KZM of the *Income Tax Assessment Act 1936* applies to expenditure incurred in return for the doing of something under an agreement which will not be completed within 13 months after the day the expenditure was incurred.
2. The prepayment of lease instalments represents an advance payment for services (that is, use of the leased asset) that are to be wholly provided within thirteen months from the date of the payment. Where the prepayment does not have the effect of reducing subsequent lease instalments section 82KZM will not apply to apportion the deduction over the period of the lease.

Example:

Mr Lee Sea entered into a 5 year lease on 1 July 1992, with monthly lease instalments of \$1,000. From July 1992, Mr Sea pays \$1,000 each month under the lease agreement, however in June 1993 he decides to make a prepayment of lease instalments. Accordingly, he pays \$13,000 being \$1,000 for the June 1993 instalment and \$12,000 being a prepayment for the next 12 months. In July 1993 and subsequent months, Mr Sea continues to pay instalments of \$1,000. During the 1996/97 financial year, the year before the lease is due to expire, Mr Sea does not make any lease payments (referred to as a 'holiday period').

Under these circumstances, section 82KZM will not apply to the prepayment.

The \$12,000 represents a prepayment of lease instalments up to June 1994. As Mr Sea has incurred the expenditure in relation to services that are to be provided within 13 months (that is, use of the leased asset), section 82KZM has no application.

The same principle applies to subsequent monthly instalments. For example, the monthly payment made in July 1993 is in effect a prepayment for the July 1994 lease instalment. This payment is also for services to be provided within the 13 month time limit specified in section 82KZM, and therefore the section will not apply.

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