


***TD 94/D79 - Income tax: does passing of title in a motor vehicle to an insurance company, in consideration for an amount paid on settlement of an insurance claim, constitute a 'disposal' and a 'sale' for the purposes of section 26AAB of the Income Tax Assessment Act 1936 ?***

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This document has been finalised by TD 94/86.

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 passing of title in a motor vehicle to an insurance company, in consideration for an amount paid on settlement of an insurance claim, constitute a 'disposal' and a 'sale' for the purposes of section 26AAB of the *Income Tax Assessment Act 1936*?**

1. Yes. The broad purpose of section 26AAB is to bring within assessable income certain profits made on the disposal of a previously leased motor vehicle, that is a motor car or station wagon. It applies where the motor vehicle is purchased from the lessor by the lessee or an associate of the lessee and the lease charges in respect of the motor vehicle have been wholly or partly deductible. Section 26AAB puts taxpayers on approximately the same footing in relation to leased motor vehicles as section 59 does in relation to the disposal of motor vehicles for which a depreciation deduction has been claimed.
2. Section 26AAB applies where the lessee or an associate of the lessee has disposed of the motor vehicle or an interest in the motor vehicle and the consideration receivable by the lessee or an associate of the lessee (the relevant taxpayer) in respect of the disposal exceeds the cost of the motor vehicle to the relevant taxpayer or the cost of the interest to the relevant taxpayer (paragraph 26AAB(1)(d)). 'Consideration receivable' is defined in subsection 26AAB(14), in the case where the motor vehicle or the interest is sold otherwise than by trade-in, to be the consideration for the sale less the expenses of the sale (paragraph 26AAB(14)(a)).
3. The terms 'disposal' and 'sale' in section 26AAB should take on extended meanings. These extended meanings will cover involuntary disposals of the type referred to in the question. This interpretation is required to achieve the purpose of section 26AAB and is consistent with the wider meaning given to the words 'disposed of' in section 59 in respect of depreciated property. In *Henty House Pty Ltd (in voluntary liquidation) v. FC of T* (1953) 88 CLR 141; 5 AITR 557; 10 ATD 231 it was considered that 'disposed of' for the purpose of section 59 is wide enough to cover all forms of alienation, whether voluntary or involuntary.

#### *Example*

*Anna leased a BMW motor vehicle and claimed all the lease payments as allowable deductions. At the expiration of the lease she purchased the vehicle from the lessor at its residual value of \$5,600.*

*Six months later she drove the vehicle into a tree and it was written off. An insurance claim was made for the pre-accident market value of the vehicle of \$25,000. Settlement of the claim resulted in title in the salvage passing to the insurance company and Anna was paid \$24,000 as a result.*

*The amount of \$24,000 would be regarded as 'consideration receivable', being consideration for the 'sale' of the vehicle. The passing of title in the salvage to the insurance company would be regarded as a 'disposal' for the purposes of section 26AAB.*

*The amount of any profit to be included in Anna's assessable income is then calculated in accordance with subsection 26AAB(2).*

**Commissioner of Taxation**07/07/94

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: sale of leased motor vehicle; leases; consideration receivable

Legislative Ref: ITAA 26AAB; ITAA59

Case Ref: Henty House Pty Ltd (in voluntary liquidation) v. FC of T (1953) 88 CLR 141; 5 AITR 557; 10 ATD 231

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