IT 2354 - Income tax: depreciation: depreciable property sold under arrangements where vendor retains use or benefits of property sold

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TAXATION RULING NO. IT 2354

INCOME TAX : DEPRECIATION : DEPRECIABLE PROPERTY SOLD UNDER ARRANGEMENTS WHERE VENDOR RETAINS USE OR BENEFITS OF PROPERTY SOLD

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210030	DEPRECIATION	59
	- SALE OF DEPRECIABLE PROPERTY	60(1) 60(2)

PREAMBLE

Where a taxpayer acquires plant or articles, i.e. depreciable property, for use in gaining or producing assessable income, e.g. in carrying on a business, the income tax deduction allowable to the taxpayer for depreciation of the depreciable property is, in the first instance, governed by section 60 of the Income Tax Assessment Act.

2. The basic rule in section 60 is that a purchaser of depreciable property is not entitled to any greater income tax deduction for depreciation than the income tax deduction to which the vendor would have been entitled had he retained the depreciable property. In practice the depreciated value of the property in the hands of the vendor is carried over to the purchaser and is the amount upon which the latter bases income tax deductions for depreciation.

3. The rationale for the basic rule in section 60 is explained in Income Tax Order 1217 (1956 Revision) at p.43 in the following terms:-

> "It is common practice for businesses owned by individuals, partnerships or companies to be transferred to a company, or a new company formed to take over the business as a going concern. In such cases it frequently happens that the assets are written up in value far above the value to which their cost had been reduced by depreciation under the Act. The written-up values generally represent in these cases the estimated cost of replacing the assets. The purchasers, in such cases, if allowed a deduction for depreciation based on the written-up values at which they nominally acquired the assets, would obtain an unfair advantage over those owners who continue to conduct their businesses without alteration of legal ownership. In no case is the deduction for depreciation calculated by reference to the

possible cost of replacing any plant or machinery, etc. A deduction is always calculated by reference to actual cost, i.e., actual money expended to acquire the asset. This necessitates excluding all added value represented by a writing up of the book values of any items of plant, etc., and the greatest care should, therefore, be exercised to see that depreciation allowance is not calculated upon a written-up value."

4. Section 60 provides two exceptions to the basic rule. Where a vendor sells depreciable property for a price in excess of its depreciated value and there is a resulting amount treated as a balancing charge in terms of section 59 income tax deductions for depreciation allowable to the purchaser are based upon the sum of the depreciated value in the hands of the vendor at the date of sale plus any balancing charge. In effect, the purchaser may calculate income tax deductions for depreciation on an amount up to the original cost of the depreciable property to the vendor.

5. The second exception is provided for in sub-section 60(2). It is there stated that section 60 does not apply at all where the Commissioner is of the opinion that the particular circumstances of a case do not warrant its application. The effect of the sub-section is that a purchaser of depreciable property may calculate income tax deductions for depreciation on the amount paid for the depreciable property irrespective of its depreciated value in the hands of the vendor and of whether the amount paid exceeds the original cost.

6. The sub-section reflects the fact that, in many ordinary commercial transactions, the market value of depreciable property to be sold exceeds the original cost to the vendor and that normal commercial or business practice requires that the purchaser account for depreciation on the cost of the depreciable property. Although the discretion in the sub-section must be exercised in each particular case it is normally exercised in the ordinary arms' length sale of depreciable property, i.e. where there is a bona fide sale, where the purchase price represents the fair market value of the depreciable property and where the depreciable property is for use in the purchaser's income producing activities and is no longer used in the income producing activities of the vendor.

FACTS

7. There have been a number of cases referred to this office recently seeking the exercise of the discretion in sub-section 60(2) in circumstances where a taxpayer, who has owned depreciable property and used it for a number of years in his business operations, has sold the depreciable property to raise finance. The sale, at a price in excess of the original cost of the depreciable property and said to represent current market value, has been made to a finance company or to some other finance entity. At the time of sale the taxpayer entered into an agreement with the purchaser by which the taxpayer retained actual use of the depreciable property, i.e., by way of leaseback or some form of tolling arrangement.

RULING

8. The arrangements do not contemplate any parting by the taxpayer of possession of the depreciable property. On the contrary, to all outward appearances nothing will change, i.e. the depreciable property will continue to be used by the taxpayer in the same manner as it has always been used. Furthermore, although the various agreements are silent about what is to happen to the depreciable property on termination of the financial arrangements in all likelihood it will be repurchased by the taxpayer. If the purchaser was allowed income tax deductions for depreciation based on the sale price of the depreciable property the rentals or tolling fees payable by the taxpayer would be that much reduced. In effect, the taxpayer would obtain the benefit of income tax deductions for depreciation a second time.

9. For the reasons indicated in the preceding paragraph it was considered that the discretion in sub-section 60(2) should not apply in the particular cases. This Ruling should be followed in comparable circumstances.

COMMISSIONER OF TAXATION
14 August 1986