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

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Generated on: 2 June 2026, 09:00:29 PM

Notice of Withdrawal

Taxation Ruling

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

Taxation Ruling IT 2354 is withdrawn with effect from today.

1. Taxation Ruling IT 2354, which issued on 14 August 1986, deals with the application of section 60 of the *Income Tax Assessment Act 1936* (ITAA 1936), and in particular the exercise of the Commissioner's discretion in subsection 60(2) of that provision. Section 60 contains a basic rule 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 they retained the depreciable property. In practice, this means that 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 under subsection 54(1) of the ITAA 1936.

2. Section 60 provided two exceptions to the basic rule outlined above:

- under subsection 60(1), where a vendor sells depreciated property for a price in excess of its depreciated value and there is a resulting balancing adjustment included in their assessable income, the purchaser may calculate income tax deductions for depreciation based upon the sum of the depreciated value in the hands of the vendor at the time of sale plus any balancing charge. In effect income tax deductions for depreciation for the purchaser are based on an amount up to the original cost of the depreciable property to the purchaser; and
- under subsection 60(2) the basic rule above, will not apply where the Commissioner is of the opinion that the circumstances are such that depreciation in respect of the property should be calculated without regard to this section.

3. Taxation Ruling IT 2354 makes it clear that sale and leaseback arrangements are not instances where the Commissioner would exercise the discretion in subsection 60(2) above. Accordingly, with sale and leaseback arrangements, the new owner of plant cannot claim more depreciation that the previous owner would have (unless subsection 60(1) above applied).

4. Section 60 does not apply to the 1997-98 income year and later years.[1] Section 42-90 of the *Income Tax Assessment Act 1997* (ITAA 1997), effectively replaced section 60 but was repealed by the *New Business Tax System (Capital Allowances) Act 2001* (Act 76 of 2001). Division 42 of the ITAA 1997 only applied for the 1997-98 income year to the 2000-2001 income year.

5. From 1 July 2001, the depreciation rules contained in Division 42 were replaced with the uniform capital allowance regime contained in Division 40 of the ITAA 1997.

6. Under Division 40 of the ITAA 1997, there is no equivalent provision to subsection 60(2) of the ITAA 1936, or former section 42-90 of the ITAA 1997. Under Division 40 of the ITAA 1997, the effective life and method used to work out the decline in value in a sale and leaseback situation are covered in subsections 40-65(3), 40-65(4), 40-95(5) and 40-95(6). In general terms, the new holder must use the same method and effective life (for diminishing value method) or remaining effective life (for prime cost method) that the previous holder used. However, the new holder is not required to use the same opening adjustable value or cost that the previous holder used.

7. As the legislation dealt with in Taxation Ruling IT 2354 no longer applies, the Ruling is withdrawn.

Commissioner of Taxation
15 December 2004

ATO references
NO: 2003/11684
ISSN: 0813-3662

[1] Section 53I of the ITAA 1936 provides that, subject to three exceptions which do not apply to the Ruling, the depreciation provisions contained in sections 54 to 62AAV inclusive of the ITAA 1936 do not apply to the 1997-1998 income year and later years.