IT 2585 - Income tax : capital gains : hobbyists - acquisition and sale of non-listed personal-use assets

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This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

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TAXATION RULING NO. IT 2585

INCOME TAX : CAPITAL GAINS : HOBBYISTS - ACQUISITION AND SALE OF NON-LISTED PERSONAL-USE ASSETS

F.O.I. EMBARGO: May be released

REF N.O. REF: 90/2988-5 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011890	CAPITAL GAINS	160B
	NON-LISTED PERSONAL-USE ASSETS	160M
		160Z
		160ZE
		160ZG
		160ZH

OTHER RULINGS ON THIS TOPIC: IT 28

PREAMBLE Some questions have recently been raised concerning the interpretation and operation of the capital gains and capital losses provisions (Part IIIA) of the Income Tax Assessment Act 1936 in relation to the acquisition and disposal of non-listed personal-use assets.

2. In particular, the matters have arisen in relation to hobbyists in the horse industry. One situation relates to a hobbyist who acquires and subsequently disposes of a number of yearlings and the second situation relates to the acquisition of a horse under a purported leasing transaction.

RULING 3. A horse that is acquired by a taxpayer who races horses as a hobby i.e., who is not carrying on a business of racing horses, is a personal-use asset for the purposes of Part IIIA. "Personal-use asset" is defined in subsection 160B(1) and includes an asset owned by the taxpayer and used or kept primarily for the personal use or enjoyment of the taxpayer. Special rules apply to the disposal of personal-use assets. Such assets can be either listed or non-listed assets. A horse is not a listed personal-use asset as defined in subsection 160B(2) and can only be, therefore, a non-listed personal-use asset - subsection 160B(3).

4. If the consideration received in respect of the disposal of a non-listed personal-use asset is less than $5,000, section 160ZE deems the consideration in respect of the disposal of that asset to be $5,000. On the other hand, if the cost base or indexed cost base of a non-listed personal-use asset is less than $5,000, section 160ZG deems the cost base or indexed cost base to be $5,000. The effect of these sections is that a capital gain is not deemed to accrue as a result of the disposal

of a non-listed personal-use asset if the consideration received is less than $5,000.

5. Where a capital loss occurs on the disposal of a non-listed personal-use asset, subsection 160Z(7) excludes the loss from being taken into account for the purposes of Part IIIA.

6. Where a hobbyist acquires a number of horses and subsequently disposes of them, any capital gain or capital loss resulting from the disposal is to be calculated in respect of each horse keeping in mind the special rules applying to non-listed personal-use assets.

7. For example, if a particular horse with a cost base that would otherwise have been $4,000 is sold for $10,000 within 12 months of the date of its acquisition, a capital gain will accrue to the taxpayer of only $5,000 rather than $6,000. On the other hand, if a horse is disposed of for $10,000 3 years after the date of its acquisition and has an indexed cost base of $6,000, a capital gain of $4,000 will accrue to the taxpayer in the normal way.

8. In the situation where a horse has not proven to be competitive and a hobbyist disposes of the horse for an amount less than its reduced cost base, a capital loss will not be deemed to have been incurred in respect of the disposal of that horse.

9. The suggestion has been made that a hobbyist intending to acquire ownership of a horse can enter into a financial arrangement which, on its face, has the legal characteristics of a lease. The suggested result for capital gains tax purposes is that on a subsequent disposal of the horse by the "lessee", the amount to be taken into account for the purpose of calculating the cost base, indexed cost base or reduced cost base of the asset will be the residual value nominated in the "lease". However, implicit in the suggestion is the existence of some form of agreement (written or otherwise) under which the property in the asset is to pass to the "lessee" or that an option (written or otherwise) has been granted by the "lessor" to purchase the horse.

10. Any transactions which exhibit such features do not conform with the various minimum conditions promulgated by this Office in relation to genuine leases - in particular, those set down in Taxation Ruling No. IT 28.

11. Where the various minimum conditions specified in IT 28 are not satisfied, the purported leasing transaction will be construed as a purchase agreement. A change in ownership of the asset shall be taken to have occurred pursuant to subsection 160M(1) and the time of acquisition of the asset will, by virtue of subsection 160U(3), be taken to be the time of the making of the purchase agreement. The capital component of the payments under the agreement will be taken to be the consideration in respect of the acquisition of the asset.

COMMISSIONER OF TAXATION
10 May 1990