

IT 87 - Meaning of 'consideration receivable' in section 59

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TAXATION RULING NO. IT 87

MEANING OF "CONSIDERATION RECEIVABLE" IN SECTION 59

F.O.I. EMBARGO: May be released

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I 1102466 PROPERTY - DISPOSAL 26(a)
BY TRADE-IN 59
PROFIT ON TRADE INS

OTHER RULINGS ON TOPIC IT 278

PREAMBLE Following judgment of the Full High Court in A.L. Hamblin Pty Ltd (and another) v FC of T; (1974) 131 CLR 570, questions have arisen as to -

- (a) the consideration receivable in respect of depreciated property disposed of by way of a trade-in, and
- (b) the cost price for depreciation purposes of property acquired where the consideration consists in part of a trade-in,

where the trade-in allowance in each instance is in excess of the true value of the relevant property.

2. The primary question before the Court was whether plant acquired under terms of a lease or hire purchase agreement and traded-in on new plant gave rise to an assessable profit under section 26(a).

3. With regard to plant acquired by hire-purchase the Court took the view that the time of entering the hire-purchase agreement was the point at which the provisions of section 26(a) would need to be satisfied. At that time there was no intention for selling it at a profit. In respect of the leased plant it was held that the interest (reversion) in the plant which was acquired by the lessee was different from the property which was traded-in. At the time the lessee acquired the totality of the leased plant the company already had a "possessory right of value" in it and this was sufficient to distinguish the "absolute title to the chattel" disposed of from the property acquired (per Barwick C.J. and McTiernan J.).

Further Jacobs J. held that the acquisition of property for the purpose of obtaining a reduction, by means of a trade-in, in the effective price to be paid for further property is "not a purpose of making a profit by the amount of the reduction" and is not the carrying on or carrying out of a profit-making undertaking or scheme.

4. In the course of his judgment, however, Barwick C.J. remarked:

"Lastly, it seems to me that it is not proper to analyse the trade-in allowance as a price obtained on resale. In this respect I would not wish to add anything to what my brother Jacobs has written in his reasons for concluding that 'the trade-in is not a sale at the price allowed on the trade-in'. The reality of the situation is that the trade-in is a device to obtain a reduction in the effective price of the article to be acquired or hired."

This gives rise to the questions stated above.

RULING

5. Whether or not the trade-in allowance represents the sale value of the property traded-in or is a discount on the purchase price of the asset acquired, or is partly one and partly the other, is of course a question of fact. However, for practical purposes, unless there is acceptable evidence that a trade-in allowance was in excess of the value of the property traded-in, the trade-in allowance should be treated as a "consideration receivable" for purposes of section 59(1) and 59(2) as defined in section 59(3)(d). Where it is shown that the trade-in allowance is in fact a discount on the price of property acquired, it would be appropriate to determine the consideration receivable under section 59(3)(d), i.e., as the value of property disposed of otherwise than by sale.

(NOTE : This sentence has been amended by Taxation Ruling No. IT 278, paragraph 8, to the extent that it should be struck out and replaced by the wording indicated in IT 278.)

6. Where a taxpayer elects that the provisions of section 59(2A) should apply it may be accepted as a general rule that the trade-in allowance is the sale price and the "cost" of the property acquired is the cost before taking the trade-in allowance into account.

COMMISSIONER OF TAXATION