



Notice of Withdrawal

Taxation Determination

Capital gains: where a pre-CGT lease is renewed post-CGT, what is the time of acquisition of the new lease?

CGT Determination Number 26 is withdrawn with effect from today.

1. CGT Determination Number 26 (TD 26) explained that under section 160ZU of the *Income Tax Assessment Act 1936* (ITAA 1936), the renewal of a lease would be taken to constitute the grant by the lessor of a new lease, which would take effect immediately after the time when the original lease would, but for the renewal, have expired. TD 26 clarified that where a lease granted pre-CGT is renewed post-CGT, the new lease is taken to have been acquired post-CGT. Hence, any subsequent disposal of the new lease may be subject to CGT.
2. Section 160ZU of the ITAA 1936 was rewritten in Subdivision 104-F of the *Income Tax Assessment Act 1997* (ITAA 1997), which is about leases. Relevantly, CGT event F1 in section 104-110 of the ITAA 1997 happens if a lessor grants, renews or extends a lease. CGT event F2 in section 104-115 of the ITAA 1997 happens if a lessor grants, renews or extends certain long term leases over land.
3. The rules in subsection 109-5(2) of the ITAA 1997 clearly set out the circumstances in which, and the time at which, a lessee acquires a lease as a result of CGT events F1 and F2 happening. In the case of CGT event F1 (where a lessor renews or extends a lease) and of CGT event F2 (where a lessor renews or extends a lease and the term is at least 50 years), the lessee acquires the lease at the start of the renewal or extension.
4. As the rewritten provisions in Subdivision 104-F of the ITAA 1997 and the acquisition rules in subsection 109-5(2) of the ITAA 1997 express the law clearly, and section 160ZU of the ITAA 1936 was repealed by *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006* as from 14 September 2006, it is considered that TD 26 is no longer required. Accordingly, this Determination is withdrawn.

TD 26

ATO references

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ATOlaw topic: Income Tax ~~ Capital Gains Tax ~~ CGT events F1 to F5 - leases