


TD 2003/D2 - Income tax: does Division 240 of the Income Tax Assessment Act 1997 ('the Act') apply to a hire purchase agreement if there is a notional buyer but no notional seller that is a party to that agreement?

 This cover sheet is provided for information only. It does not form part of *TD 2003/D2 - Income tax: does Division 240 of the Income Tax Assessment Act 1997 ('the Act') apply to a hire purchase agreement if there is a notional buyer but no notional seller that is a party to that agreement?*

This document has been finalised by TD 2003/16.



Draft Taxation Determination

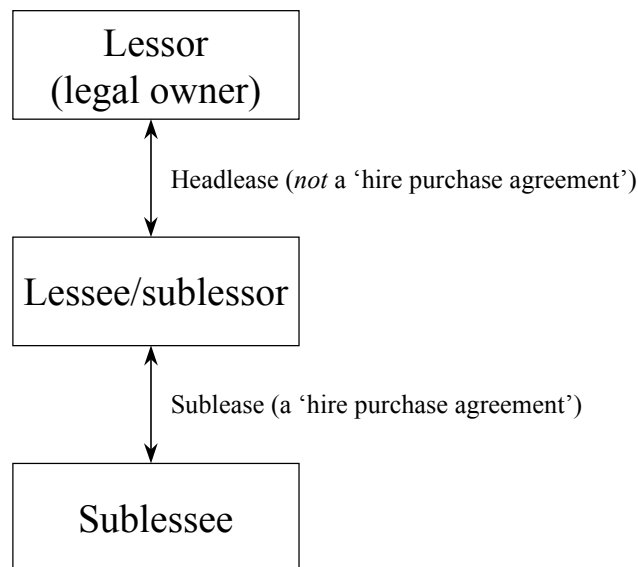
Income tax: does Division 240 of the *Income Tax Assessment Act 1997* ('the Act') apply to a hire purchase agreement if there is a notional buyer but no notional seller that is a party to that agreement?

Preamble

Draft Taxation Determinations (DTDs) represent the preliminary, though considered, views of the Australian Taxation Office. DTDs may not be relied on by taxpayers and practitioners. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.

1. No.
2. Division 240 of the Act deals with hire purchase agreements (as defined). The broad scheme of the Division is to treat such hire purchase agreements as a sale of the relevant goods to the hirer ('notional buyer') combined with a loan from the supplier ('notional seller') to the notional buyer.
3. A contract between a hirer and a supplier may meet the definition of hire purchase agreement so that, *prima facie*, Division 240 would apply (see section 240-10). A party to a hire purchase agreement will be a notional buyer if it has the right to use the hired goods (see subsection 240-17(2)). However, it is possible under some arrangements that there may be no notional seller of the goods.
4. Under subsection 240-17(1), a notional seller is a party to the agreement that:
 - actually owns the goods, or
 - is taken to be the owner by a previous application of Division 240.
5. If the supplier meets neither of these requirements, it will not be a notional seller. This could arise, for example, where the supplier is a lessee of the goods under a headlease that is *not* a hire purchase agreement as defined and is subleasing the goods to the hirer under a lease that is a hire purchase agreement as defined. In that example, the headlease might not be a 'hire purchase agreement' as defined because the charges under the agreement may not exceed the price of the goods as required by paragraph (a)(ii) of the definition in subsection 995-1(1) of the Act.

6. This diagram illustrates that kind of arrangement.



7. Sections 240-20 and 240-25 proceed on the basis that there is both a notional seller and a notional buyer in each arrangement covered by the Division. They create the notional sale and loan (see paragraph 2) upon which the other operative provisions of Division 240 rely. If there is no notional seller there can be no ‘notional loan’ or ‘notional loan principal’ upon which to base, say, the ‘notional interest’ calculations in section 240-60.

8. Accordingly, it is not possible to apply Division 240 in circumstances where there is no notional seller.

9. The Commissioner would consider applying Part IVA of the *Income Tax Assessment Act 1936* in any case where there is a tax benefit obtained through a scheme that ensures there is no notional seller in a hire purchase agreement. This might be done by adopting a structure of the kind discussed above for the sole or dominant purpose of obtaining the tax benefit.

Date of Effect

10. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

11. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

TD 2003/D2

Comments by date: 26 March 2003
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Commissioner of Taxation

26 February 2003

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations

TR 92/20

Subject references:

- hire purchase

Legislative references:

- ITAA 1936 Pt IVA
- ITAA 1997 Div 240
- ITAA 1997 240-10
- ITAA 1997 240-17(1)
- ITAA 1997 240-17(2)
- ITAA 1997 240-20
- ITAA 1997 240-25
- ITAA 1997 240-60
- ITAA 1997 995-1(1)

ATO References

NO: 2003/001921

ISSN: 1038-8982