IT 278 - Disposal of property by trade-in - application of section 26aaa and 59

TAXATION RULING NO. IT 278

DISPOSAL OF PROPERTY BY TRADE-IN - APPLICATION OF SECTION 26AAA AND 59

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1101288	PROPERTY - DISPOSAL BY TRADE-IN	26AAA 59
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OTHER RULINGS ON TOPIC IT 87

PREAMBLE The following advice was given concerning profits arising from the disposal by trade-in of property acquired under leasing arrangements in the light of the High Court's decision in the Hamblin case, (1974) 131 CLR 570.

RULING Application of s.26AAA

2. The first question to be considered is whether, because of a possible lack of identity in interest between the property acquired from the lessor and the property traded-in, the section is applicable at all. Application of the section to trade-ins of formerly leased property within 12 months of the lessee obtaining the proprietory interest, but outside of 12 months from the commencement of the lease, probably the usual situation encountered, could well be open to challenge on this point. However, it is considered that the section should be applied in all cases where formerly leased property is immediately traded-in at a value in excess of the residual value.

3. With regard to the question of cost price for the purpose of calculating the profit, the "paid -out" figure should be accepted as the cost price.

4. Another matter for consideration is the figure to be regarded as the sale price for the purpose of calculating the profit. In view of the opinions expressed by at least three of the High Court judges in the Hamblin case, it appears that, in many trade-in cases at least, the sale price ought to be regarded as something less than the trade-in value. The real sale price in these cases will not be easily apparent, particularly where the property traded-in is an uncommon and expensive item of plant. Nevertheless, there seems to be no real alternative to equating sale price in these cases with market price i.e. value on the open market, itself not a very

obvious quantity in many cases.

5. However, it should not by any means be accepted that in all trade-in cases the sale price would be less than the trade-in price. This would clearly not always be the case, for instance, in relation to the purchase of motor cars. Hence, the above ruling should only be applied where one is satisfied that in the particular case the trade-in is in fact "a device to obtain a reduction in the effective price of the article to be acquired", to use the words of Jacobs J. In those cases where not so satisfactorily established and where it appears that the trade-in price is substantially equal to or less than the market value, the trade-in price should be regarded as the sale price for the purposes of calculating the profit.

6. Where satisfied that the sale price for the purpose of calculating the profit is less than the trade-in price, the price of the new property purchased should be reduced by the difference for depreciation purposes. If the trade-in price is not to be regarded as the sale price, this is only on the ground that it includes some subsidy or discount on the price of the new property. Accordingly, to prevent the taxpayer from receiving an unwarranted advantage, the cost price of the new property should be reduced for depreciation purposes by the amount of this discount.

Application of s.59

7. With regard to the application of s.59 and Tax Ruling IT 87, some difficulty exists in applying s.59(3)(d) in the light of the apparent conclusion of the majority of the court in Hamblin that a trade-in does constitute a sale.

8. Accordingly, the instructions contained in paragraph 5 of Tax Ruling IT 87 are amended to the extent of striking out the last sentence and replacing it by the following: "Where it is shown that the trade-in allowance does in fact include a discount element on the price of property acquired, the "sale price" for the purposes of s.59(3)(a) should be, generally speaking, market value. In some cases such as certain kinds of expensive, uncommon earth moving equipment, arriving at the market value will not be easy. Regard should be had, if possible, to the price the property would fetch in the best available market. In these cases, as the excess of the trade-in allowance over the sale price of the article traded-in has been regarded as a disguised discount on the purchase of the new article, the amount of the excess is deductible from the cost price of the new article in arriving at the figure on which depreciation will be allowable."

COMMISSIONER OF TAXATION