



PR 2004/106 - Income tax: tax consequences for Employees under the Lease Plan Australia Limited laptop computer leasing and novation arrangement

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 This document has changed over time. This is a consolidated version of the ruling which was published on *17 November 2004*



Product Ruling

Income tax: tax consequences for Employees under the Lease Plan Australia Limited laptop computer leasing and novation arrangement

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Potential participants may wish to refer to the Tax Office website at www.ato.gov.au or contact the Tax Office directly to confirm the currency of this Product Ruling or any other Product Ruling that the Tax Office has issued.

Preamble

*The number, subject heading, **What this Product Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVA of the **Taxation Administration Act 1953**. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

No guarantee of commercial success

The Tax Office **does not** sanction or guarantee this product. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products and how the product fits an existing portfolio. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out in the **Ruling** part of this document are available, **provided that** the arrangement is carried out in accordance with the information we have been given, and have described below in the **Arrangement** part of this document.

If the arrangement is not carried out as described, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential participants should be aware that the Tax Office will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

Terms of use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling relates. In this Ruling, the arrangement is the entering into of:

- the Employee Operating Lease Agreement Laptop Computer offered in relation to a laptop computer (the 'Laptop Computer') by Lease Plan Australia Limited ('Lease Plan') acting in its capacity as agent for and on behalf of Australian Leasing Group Pty Ltd; and
- the Novation Agreement Laptop Computer.

2. This Ruling does not address the tax consequences:

- of a variation or an early termination of the arrangement;
- where compensation is paid or payable under the arrangement; and
- of extending the arrangement.

Tax law(s)

3. The tax laws dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 6-10 of the ITAA 1997; and
- subsection 23L(1A) of the *Income Tax Assessment Act 1936* (ITAA 1936);

Class of persons

4. The class of persons to whom this Ruling applies is those employees who enter into the arrangement described below, on or after the date this ruling is made. In this Ruling this class of persons is referred to as 'Employees'.

Qualifications

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Date of effect

6. This Ruling applies prospectively from 17 November 2004, the date this Ruling is made. However, the Ruling does 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 Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

7. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on the private ruling if the income year to which the private ruling relates has ended, or has commenced but not yet ended. However, if the arrangement covered by the private ruling has not begun to be carried out, and the income year to which it relates has not yet commenced, this Product Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34)

Withdrawal

8. This Product Ruling is withdrawn and ceases to have effect after 30 June 2008. The Ruling continues to apply, in respect of the tax laws ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the Ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no material difference in the arrangement or in the persons' involvement in the arrangement.

Arrangement

9. The arrangement that is subject to this Ruling is described below. This arrangement incorporates the following documents:

- Application for Product Ruling dated 5 August 2004, received from AJH Lawyers on behalf of Lease Plan;
- Employee Laptop Order Form ('Laptop Form') received 7 September 2004;

- Employee Operating Lease Agreement Laptop Computer ('Lease Agreement') received 7 September 2004;
- Novation Agreement Laptop Computer ('Novation Agreement') received 7 September 2004; and
- further information received 7 September 2004.

Note: certain information received from Lease Plan has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

10. If approved for credit, an employee is entitled to enter into a Lease Agreement with Lease Plan. Upon the Lease Agreement being entered into between Lease Plan and the Employee, it is novated to the employer, which assumes all the rights and obligations under the Lease Agreement and makes rental payments due under the Lease Agreement directly to Lease Plan as part of a salary package made between the employer and the Employee. The Employee retains possession of the Laptop Computer and continues to use and enjoy it for the duration of the leasing arrangement.

11. The details of the aspects of the arrangement subject to this ruling are summarised as follows:

- (a) An Employee will:
- upon receiving approval for their credit application, accept Lease Plan's offer to lease a Laptop Computer by signing and returning by post to Lease Plan, the Laptop Form, the Lease Agreement, and the Novation Agreement;
 - by signing the agreements the Employee leases the Laptop Computer and novates their rights and obligations under the Lease Agreement to their employer under the Novation Agreement; and
 - upon execution of the Novation Agreement, re-acquire rights under the 'early termination' and 'termination upon lease term expiry' provisions under the Lease Agreement as these rights are automatically novated from the employer back to the Employee under the Novation Agreement.

The Lease Agreement

- (b) The obligations under the Lease Agreement will be assumed by the employer under the terms of the Novation Agreement.
- (c) The key features of the Lease Agreement are as follows:
- the term of the Lease Agreement may be one, two or three years;

- the Employee is responsible for regular rental payments and for keeping the Laptop Computer in good repair; and
- at the end of the lease term the Employee may elect to return the Laptop Computer to Lease Plan or purchase the Laptop Computer for a price nominated by Lease Plan.

The Novation Agreement

- (d) The Novation Agreement is a tripartite agreement entered into between Lease Plan, the Employee and the Employee's employer.
- (e) The key features of the Novation Agreement are as follows:
 - all the obligations of the Employee under the Lease Agreement are assumed by the employer for the duration of the Novation Agreement;
 - the employer is entitled to all the rights (except for those rights relating to the 'early termination' and 'termination upon lease term expiry' provisions which shall automatically be novated from the employer back to the Employee) to which the Employee is entitled under the Lease Agreement;
 - the Novation Agreement terminates upon the happening of certain events, one of which is the termination of the Lease Agreement due to the expiry of the lease term; and
 - upon termination of the Novation Agreement, the rights and obligations under the Lease Agreement are novated back to the Employee.

The Participants

12. Lease Plan Australia Limited acting in its capacity as agent for and on behalf of Australian Leasing Group Pty Ltd leases laptop computers to Employees. Lease Plan Australia Limited and those Employees then enter into Novation Agreements with the employer of those Employees.

13. Employees can only be individuals.

Ruling

14. Subject to paragraphs 2 and 15 of this Ruling:
- (a) an Employee will not derive assessable income under sections 6-5 or 6-10 of the ITAA 1997 as a result of novating their obligations under the Lease Agreement through the Novation Agreement; and
 - (b) the rental payments made by the employer under the Novation Agreement are exempt income of the Employee under subsection 23L(1A) of the ITAA 1936.

Assumptions

15. This Ruling is made on the basis of the following necessary assumptions:
- (a) the Employee receives, or is entitled to receive, salary and wages, as defined for the purposes of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986), from their employer;
 - (b) the Lease Agreement will run its full term;
 - (c) the Lease Agreement and the Novation Agreement commence on the same date;
 - (d) the arrangement will be executed in the manner described in the Arrangement section of this Ruling;
 - (e) all dealings by an Employee, their employer and Lease Plan will be at arm's length; and
 - (f) an expense payment benefit or a property benefit (as those terms are defined in the FBTAA 1986) of the Employee has not arisen earlier in the FBT year in relation to another laptop computer, notebook computer or similar portable computer.

Explanation

Sections 6-5 and 6-10 of the ITAA 1997

16. Under Division 6 of the ITAA 1997, assessable income consists of both ordinary income and statutory income. Section 6-5 sets out the rules for ordinary income and section 6-10 sets out the rules for statutory income.

17. Subsection 6-5(4) provides that an amount of ordinary income will be taken to be received as soon as it has been applied or dealt with in any way on behalf of or as directed by the taxpayer. Subsection 6-10(3) provides that an amount that would otherwise be

statutory income of a taxpayer but for the fact that it is not received becomes statutory income of the taxpayer as soon as it is applied or dealt with in any way on behalf of or as directed by the taxpayer.

18. As a result of the Novation Agreement, an employer will make rental payments under the Lease Agreement to Lease Plan. These payments are not amounts being paid on behalf of an Employee by their employer. The payments are being made in respect of the rights and obligations that have been assumed by the employer under the Novation Agreement. Specifically, the payments are made in respect of the rights set out in the Lease Agreement that are novated to the employer, such as the right of the employer to obtain possession of the Laptop Computer subject to the Lease Agreement for the duration of the Novation Agreement.

19. Accordingly, payments made under the Lease Agreement by the employer as a result of entering into the Novation Agreement will not constitute ordinary income derived by the Employee under section 6-5. Subsection 6-5(4) has no application because the amounts are not applied or dealt with on behalf of the Employee or as the Employee directs.

20. These payments will not constitute statutory income of the Employee under section 6-10. Subsection 6-10(3) has no application because the amounts are not applied or dealt with on behalf of the Employee or as the Employee directs.

21. Possession of the Laptop Computer and all other obligations of the Lease Agreement are novated to the employer. There is not an actual transfer of the relevant rights and obligations, but rather an assumption by the employer of those specific rights and obligations. The absence of a sub-lease under the Novation Agreement means that an assessable benefit will not arise for an Employee in respect of the making of the rental payments under sections 6-5 or 6-10.

Subsection 23L(1A) of the ITAA 1936

22. Under the Novation Agreement, the employer will have possession of the Laptop Computer for the duration of the Novation Agreement, as the employer assumes all of the rights and obligations in respect of the Lease Agreement.

23. The novated rental payments by an employer in respect of the Laptop Computer are an exempt benefit for fringe benefits tax purposes.

24. Under subsection 23L(1A), where an Employee derives income by way of the provision of an exempt benefit for fringe benefit tax purposes, the income is exempt income.

Detailed contents list

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Commissioner of Taxation

17 November 2004

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Not previously issued as a draft

Legislative references:

Related Rulings/Determinations:

- ITAA 1936 23L(1A)
- ITAA 1997 Div 6
- ITAA 1997 6-5
- ITAA 1997 6-5(4)
- ITAA 1997 6-10
- ITAA 1997 6-10(3)
- Copyright Act 1968
- FBTAA 1986
- TAA 1953 Pt IVA

Subject references:

- laptop computers
- leasing
- novation
- product rulings
- public rulings

ATO references

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