


***TD 94/86 - Income tax: does passing of title in a motor vehicle to an insurance company, in consideration for an amount paid on settlement of an insurance claim, constitute a 'disposal' and a 'sale' for the purposes of section 26AAB of the Income Tax Assessment Act 1936 ?***

 This cover sheet is provided for information only. It does not form part of *TD 94/86 - Income tax: does passing of title in a motor vehicle to an insurance company, in consideration for an amount paid on settlement of an insurance claim, constitute a 'disposal' and a 'sale' for the purposes of section 26AAB of the Income Tax Assessment Act 1936 ?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a 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).

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## Taxation Determination

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### **Income tax: does passing of title in a motor vehicle to an insurance company, in consideration for an amount paid on settlement of an insurance claim, constitute a 'disposal' and a 'sale' for the purposes of section 26AAB of the *Income Tax Assessment Act 1936*?**

1. Yes. The broad purpose of section 26AAB is to bring within assessable income certain profits made on the disposal of previously leased motor vehicles, that are motor cars or station wagons. The section applies where the motor vehicle is purchased from the lessor by the lessee or an associate of the lessee and the lease charges for the vehicle have been wholly or partly deductible. Section 26AAB puts taxpayers on approximately the same footing in relation to leased motor vehicles as section 59 does in relation to the disposal of motor vehicles for which depreciation deductions have been claimed.

2. Section 26AAB applies where the lessee or an associate of the lessee has disposed of the motor vehicle or an interest in the vehicle and the consideration receivable by this person exceeds the cost to them of the whole vehicle, or the cost of the interest in the vehicle, as the case may be (paragraph 26AAB(1)(d)). 'Consideration receivable' is defined in subsection 26AAB(14), in the case where the motor vehicle or the interest is sold otherwise than by trade-in, to be the consideration for the sale less the expenses of the sale (paragraph 26AAB(14)(a)).

3. The terms 'disposal' and 'sale' in section 26AAB should take on extended meanings. These extended meanings will cover transfers of the type referred to in the question. This interpretation is required to achieve the purpose of section 26AAB and is consistent with the wider meaning given to the words 'disposed of' in section 59 in respect of depreciated property. In *Henty House Pty Ltd (in voluntary liquidation) v. FC of T* (1953) 88 CLR 141; 5 AITR 557; 10 ATD 231 it was held that the words 'disposed of' in section 59 were wide enough to cover all forms of alienation of property, whether voluntary or involuntary.

#### *Example*

*Anna leased a BMW motor vehicle and claimed all the lease payments as allowable deductions. When the term of the lease came to an end she purchased the vehicle at its residual value of \$9,500.*

*Six months later she drove the vehicle into a tree and it was written off. She made an insurance claim for the pre-accident market value of the vehicle of \$47,000.*

*The insurance company paid Anna \$44,900 in settlement of the claim and title to the salvage then passed to the insurance company.*

*The amount of \$44,900 would be 'consideration receivable', being consideration for the 'sale' of the vehicle. The passing of title in the salvaged remains of the vehicle to the insurance company would be a 'disposal' for the purposes of section 26AAB.*

*The amount of any profit to be included in Anna's assessable income would then be calculated in accordance with subsection 26AAB(2).*

## **Commissioner of Taxation**

3/11/94

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Related Determinations:

Related Rulings:

Subject Ref: consideration receivable; leases; sale of leased motor vehicle

Legislative Ref: ITAA 26AAB; ITAA 26AAB(1)(d); ITAA 26AAB(2); ITAA 26AAB(14); ITAA 26AAB(14)(a); ITAA 59

Case Ref: Henty House Pty Ltd (in voluntary liquidation) v. FC of T (1953) 88 CLR 141; 5 AITR 557; 10 ATD 231

ATO Ref: PUL 94/A.747; NAT 94/7617-2

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