

CAPITAL GAINS: RENT WITH PURCHASE OPTION

ALL FINANCE MATTERS

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A taxpayer entered into a lease agreement with a purchase option. Can these rents be included in the seller's capital gains calculation? How?

Rents as Advance Payments

In a non-residential lease agreement with a company, the rents were structured as part of the property's sale price to the company. The taxpayer received the rents, issued receipts, and reported the amounts on their IRS return.

This year, the taxpayer sold the property to the leasing company. A question arises: Will the sale amount stated in the deed be taxed in full, or can it be reduced by the rents paid? Alternatively, can these amounts be treated as expenses? To clarify, the taxpayer requested a binding ruling from the tax authorities.

Capital Gains: General Rule

Generally, capital gains arise from the sale of real estate rights, unless the gains fall under business, professional, capital, or rental income.

Calculation: For these cases, the capital gain subject to IRS is the difference between the sale price and the acquisition cost. Note: Although the sale price (referred to as the realization value) typically equals the consideration paid, if higher values were used to determine IMT (or what should have been calculated if IMT were applicable), those values prevail.

Charges: The law specifies certain expenses and charges relevant to capital gains calculation, including:

- Costs for property improvements incurred within the last 12 years (e.g., renovations);
- Necessary and actual expenses related to acquisition and sale (e.g., notary fees);
- In certain situations, compensation paid for relinquishing contractual rights related to the property (e.g., position transfer).

Do Rents Paid as Advance Payments Fit These Concepts?

Rents Not Covered: According to the AT, there are no provisions in the relevant norms for deducting received rents.

Total Capital Gains: Therefore, for the AT, the sale value used to calculate capital gains is the amount stated in the deed, and rents cannot be deducted as

expenses or charges. This results in double taxation (first as rents and then as part of the sale).

But There's a Solution!

In the binding ruling, the tax authorities proposed a solution:

Convert Rents into Payments: To include rents as part of the sale price, the AT suggested the taxpayer should appeal the IRS assessment for the past 2 years and initiate administrative litigation. Important: During this process, the taxpayer must prove that the received rents were an advance payment towards the sale price.

From Category F to Category G: If the taxpayer can prove during administrative litigation that the rents were an advance payment for the sale price, they will be reclassified from Category F to Category G in the IRS. In practice, this means the rents will be integrated into the sale price.

Taxpayers with lease agreements featuring a purchase option can request a review of declared rents in the IRS, incorporating them into the sale value.



For any inquiries or support, our team can guide you through the whole moving process. Feel free to reach out to us at info@afm.tax or visit www.afm.tax.

"YOU MUST PAY TAXES, BUT THERE'S NO LAW THAT SAYS YOU NEED TO LEAVE A TIP!"