

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA 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).

Taxation Determination

Income tax: in what circumstances is a deduction allowable for the cost of fences and gates constructed on a carer's property, under the direction of Family Day Care?

1. Expenditure of this kind is capital in nature and not an allowable deduction under subsection 51(1) of the *Income Tax Assessment Act 1936* (ITAA).
2. As the fences and gates are not plant or articles for the purposes of the depreciation provisions, no deduction is allowable for depreciation of those items constructed before 27 February 1992.
3. If construction of the fences and gates commenced after 26 February 1992, a deduction may be allowable under Division 10D.
4. Fences and gates are structural improvements for the purposes of Division 10D (section 124ZFB). Division 10D allows the capital cost of income-producing structural improvements commenced to be constructed after 26 February 1992 to be written off over 40 years at 2.5% each year if that cost is not otherwise written off under the ITAA.
5. Subsection 124ZF(4A) and subsection 124ZF(6A) deny a deduction where the relevant 'property' is part of a taxpayer's home. However, Taxation Ruling IT 2397 at paragraph 9 states, 'A deduction is allowable in respect of an area which, although in the same building as the taxpayer's home, is a separate and distinct area used for income-producing purposes - for example, a self contained area in which the taxpayer carries on his or her business.'
6. Fences and gates on a carer's residential property are usually part of the carer's home. Consequently, a carer is generally not entitled to a deduction under Division 10D for the cost of fences and gates.
7. A carer is only entitled to a deduction if the improvements relate to an area which is separate and distinct from the home and set aside for the care of children under a Family Day Care program. It would only be in rare circumstances that fences and gates at a carer's residence would meet these requirements.

Commissioner of Taxation

18/2/93

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Related Determinations:

Related Rulings: IT 2396; IT 2397

Subject Ref: capital asset; capital expenditure; child care centres; creches; depreciation; fences; structural improvements

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