


TD 2002/D2 - Income tax: is a deduction under section 8-1 of the Income Tax Assessment Act 1997 allowable for underwriting fees paid as part of a Harvest Payment Agreement with either AWB (International) Limited or AWB (Australia) Limited or a Payment Agreement with ABB Grain Export Limited?

 This cover sheet is provided for information only. It does not form part of *TD 2002/D2 - Income tax: is a deduction under section 8-1 of the Income Tax Assessment Act 1997 allowable for underwriting fees paid as part of a Harvest Payment Agreement with either AWB (International) Limited or AWB (Australia) Limited or a Payment Agreement with ABB Grain Export Limited?*

This document has been finalised by TD 2002/18.

Draft Taxation Determination

Income tax: is a deduction under section 8-1 of the *Income Tax Assessment Act 1997* allowable for underwriting fees paid as part of a Harvest Payment Agreement with either AWB (International) Limited or AWB (Australia) Limited or a Payment Agreement with ABB Grain Export Limited?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

1. Yes.
2. When a grower enters into a harvest payment agreement or payment agreement, the grower can elect to receive harvest advance drawing amounts or drawing amounts respectively as a loan prior to receiving any distributions from a pool and have future pool distributions applied against the outstanding loan balance. However, pool distributions may not entirely repay amounts owing in respect of a grower's harvest advance drawing amounts or drawing amounts. For the payment of a commercial underwriting fee, AWB Finance Limited ('AWBF'), AWB (Australia) Limited ('AWBA') or ABB Grain Export Limited ('ABBGEL') accepts this risk and undertakes that it will not recover from the grower the difference between the drawing amount and the pool distributions.
3. The payment of the underwriting fee by the grower as part of a harvest payment agreement or payment agreement is an integral part of the pooling arrangements for the sale of wheat or barley to AWB (International) Limited, AWBA or ABBGEL. The underwriting fee is calculated as a rate per tonne delivered. A grower who has underwriting protection and who is discharged from any obligation to pay any amounts owing, includes in assessable income the amounts discharged. In these circumstances the nexus between the underwriting expense and the derivation of assessable income for the purposes of section 8-1 of the *Income Tax Assessment Act 1997* is established.
4. Accordingly, the underwriting fee is deductible under section 8-1.

Your comments

5. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by date: 26 April 2002

Contact Officer: Kevin O'Shaughnessy

E-Mail address: kevin.o'shaughnessy@ato.gov.au

Telephone: (03) 9275 6082 or 0401 143 258

Facsimile: (03) 9275 2607

Address: **Australian Taxation Office**
3rd Floor
990 Whitehorse Road
BOX HILL VIC 3128

Commissioner of Taxation

27 March 2002

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations

TR 2001/1, TR 2001/5

Subject references:

- deductions & expenses;
- incurred;
- wheat growing;
- crops as trading stock;

Legislative references:

- ITAA 1997 8-1

ATO references:

NO: T2001/004530; T2002/003793

ISSN: 1038-8982