TD 2005/D17 - Income tax: is an employee's deduction for the decline in value of a depreciating asset used for a taxable purpose affected by section 51AH of the Income Tax Assessment Act 1936, if they are subsequently reimbursed an amount for the cost of the asset by their employer?

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Generated on: 27 November 2026, 02:40:59 AM

Draft Taxation Determination

Income tax: is an employee's deduction for the decline in value of a depreciating asset used for a taxable purpose affected by section 51AH of the *Income Tax Assessment Act 1936*, if they are subsequently reimbursed an amount for the cost of the asset by their employer?

Preamble

This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the ***Taxation Administration Act 1953****. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No. Section 51AH of the *Income Tax Assessment Act 1936* (ITAA 1936) does not apply to affect the employee's deduction for the decline in value of their asset.

2. If an employee is reimbursed for a loss or outgoing for which a tax deduction is available and the reimbursed amount is not included in the employee's assessable income, section 51AH of the ITAA 1936 applies to reduce the deduction (or the loss or outgoing on which it is based) by the reimbursement.

3. However, if the employee is reimbursed for the cost of a depreciating asset they use for a taxable purpose, section 51AH of the ITAA 1936 does not apply to reduce their decline in value deduction (or the cost of the asset on which such a deduction is worked out). Section 51AH of the ITAA 1936 and the 'otherwise deductible rule' in section 24 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986) constitute a scheme of taxation designed to take into account losses or outgoings that are deductible in one income year. Deductions for decline in value are taken over the effective life of depreciating assets and are not intended to be part of that scheme.

4. The otherwise deductible rule in the FBTAA 1986 provides for a reduction in taxable value of a benefit if the employee who received the benefit would have been entitled to a once-only income tax deduction for the expenditure if that expenditure had not been paid or reimbursed by the employer but paid by the employee.

5. Section 51AH of the ITAA 1936 is designed to provide income tax symmetry in such circumstances. That is, if the fringe benefits tax liability is reduced because of a notional entitlement to a once-only deduction, then the actual deduction allowable must also be reduced.

6. The context of this design framework means that deductions which are not 'once-only' deductions are not contemplated by section 51AH. Deductions for decline in value of a depreciating asset are not 'once-only deductions' and are therefore unaffected by section 51AH of the ITAA 1936.

Example

7. Employee X acquires a computer at a cost of $3000. X's employer reimburses X part of the cost of the computer.

8. The computer is used by X only 30% of the time for a taxable purpose. X works out the decline in value of the computer based on the full cost of $3000 and reduces their deduction by 70% to reflect the 30% only use for a taxable purpose. Neither the cost of the computer nor the decline in value deduction is reduced by the employer's reimbursement.

Date of effect

9. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the Determination will 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 Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Your comments

10. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

Due date:	**29 July 2005**
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Commissioner of Taxation
29 June 2005

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20

Previous Rulings/Determinations:

TD 93/145

Subject references:

- deduction for depreciating assets
- FBT otherwise deductible rule
- reimbursed expenses

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1936 51AH
- FBTAA 1986 24

ATO references

NO:	2005/7693
ISSN:	1038-8982
ATOlaw topic:	Income Tax ~~ Deductions ~~ other employment related expenses; Income Tax ~~ Deductions ~~ expenses incurred by employer for employees