

# ***TD 92/D221 - Income tax: over what period are two or more prepayments apportioned in terms of section 82KZM of the Income Tax Assessment Act 1936?***

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This document has been finalised by TD 93/118.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **Income tax: over what period are two or more prepayments apportioned in terms of section 82KZM of the *Income Tax Assessment Act 1936*?**

1. A prepayment is not apportioned but is allowed in full as a deduction in the year in which it is incurred if all the services in respect of the prepayment are to be provided within 13 months of incurring the expenditure.
2. Under section 82KZM, if a prepayment is made under an agreement entered into after 25 May 1988 for the doing of a thing that is not to be wholly done within 13 months after the day on which the expenditure is incurred, then the prepayment is apportioned over the period to which it relates, unless it is excluded expenditure as defined in subsection 82KZL(1).  
  
Excluded expenditure means an amount of expenditure:
  - (a) less than \$1,000;
  - (b) required to be incurred by a law, or by an order of a court, of the Commonwealth, a State or a Territory;
  - (c) under a contract of service; or
  - (d) to the extent that it is of a capital, private or domestic nature.
3. If two or more prepayments of less than \$1,000 each are made to exploit the threshold for avoiding the application of subsection 82KZM, then the general anti-avoidance provisions of Part IVA may be invoked.
4. If two or more prepayments greater than \$1,000 each are made under an agreement, the period to which each payment relates has to be identified to determine whether the Subdivision applies.

#### *Example 1.*

*Taxpayer A enters into an agreement to commence on 1 July 1992 with an eligible service period as defined in subsection 82KZL(1) of 18 months (549 days). The payments under the agreement are \$100 per month.*

*The Taxpayer makes prepayments as follows:*

|               |       |
|---------------|-------|
| 1 July 1992   | \$900 |
| 1 August 1992 | \$900 |

The prepayments are made in the above amounts to exploit the threshold for the purposes of avoiding the application of Subdivision H of Division 3 of Part III.

Although each prepayment is less than \$1,000, Part IVA would be invoked in this case to apportion the total payment over the period to which it relates.

The deduction allowable each year would be as follows:

|                    |        |                                 |
|--------------------|--------|---------------------------------|
| Year ended 30/6/93 | \$1197 | ( \$1,800 x $\frac{365}{549}$ ) |
| Year ended 30/6/94 | \$ 603 | ( \$1,800 x $\frac{184}{549}$ ) |

#### Example 2

Taxpayer B enters into an agreement on the 30 June 1992 which is for a period of 25 months commencing on the 1 July 1992. The payments are \$1000 per month..

She makes a prepayment of 13 months (\$13,000) on the 30 June 1992 and a further prepayment for the balance of the agreement (\$12,000) on the 1 July 1992.

The \$13,000 prepayment is allowable in full in the year it is incurred as all the services in respect of the prepayment will be provided within 13 months of incurring the expenditure.

The \$12,000 prepayment relates to the period 1 August 1993 to 31 July 1994 (365 days). As all the services to which the \$12,000 prepayment relate will not be wholly done within 13 months after the day on which this expenditure is incurred, then this prepayment is apportioned over the period to which it relates, as set out below.

The deduction allowable to Taxpayer B in each year of income is as follows:

|                    |          |                                  |
|--------------------|----------|----------------------------------|
| Year ended 30/6/92 | \$13,000 |                                  |
| Year ended 30/6/93 | NIL      |                                  |
| Year ended 30/6/94 | \$10,981 | ( \$12,000 x $\frac{334}{365}$ ) |
| Year ended 30/6/95 | \$ 1019  | ( \$12,000 x $\frac{31}{365}$ )  |

#### Commissioner of Taxation

26/11/92

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: prepayments

Legislative Ref: ITAA 51(1); ITAA 82KZL; ITAA 82KZM

Case Ref:

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