

TD 92/D223 - Income tax: does section 82KZM of the Income Tax Assessment Act 1936 apply to a prepayment for a service to be provided over a 12 month period?

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This document has been finalised by TD 93/117.

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.

Draft Taxation Determination

Income tax: does section 82KZM of the *Income Tax Assessment Act 1936* apply to a prepayment for a service to be provided over a 12 month period?

1. Yes, section 82KZM applies to prepaid expenditure incurred under an agreement for a thing to be done over a 12 month period, if the agreement does not require the thing to be wholly done within 13 months after the day on which the prepaid expenditure is incurred.
2. Subdivision H of Division 3 of Part III comprising section 82KZL to section 82KZO has the effect of denying an immediate deduction for certain prepaid expenditure (except excluded expenditure, see point 4 below) which is incurred under an agreement entered into after 25 May 1988. This expenditure which would otherwise be deductible under subsection 51(1) must be apportioned over the eligible service period.
3. Subsection 82KZL(1) defines 'eligible service period' as the period from the beginning of:
 - (a) the day, or the first day, on which the thing to be done under the agreement in return for the amount of expenditure is required, or permitted, as the case may be, to commence being done; or
 - (b) if the expenditure is incurred on a later day - the day on which the expenditure is incurred; until the end of;
 - (c) the day, or the last day, on which the thing to be done under the agreement in return for the amount of expenditure is required, or permitted, as the case may be, to cease being done; or
 - (d) if that day or last day ends more than 10 years after the beginning of the period -- 10 years after the beginning of the period.
4. Excluded expenditure means an amount of expenditure:
 - (a) less than \$1,000;
 - (b) required to be incurred by a law, or by 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.

Example:

Where an agreement provides for services to be provided over a 12 month period commencing at any time during the 1992 calendar year, the eligible service period will be the period from midnight on 31 December 1991 to midnight on 31 December 1993 (731 days).

If a prepayment of \$10,000 for this service was made on 1 January 1992 the expenditure would be deductible as follows:

Year ended 30/6/92 \$2,490 $(\$10,000 \times 182/731)$

Year ended 30/6/93 \$4,993 $(\$10,000 \times 365/731)$

Year ended 30/6/94 \$2,517 $(\$10,000 \times 184/731)$

Commissioner of Taxation

26/11/92

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: prepayments

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

Case Ref:

ATO Ref: NEW TD29

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