TD 94/D47 - Income tax: can a life assurance company claim a deduction or loss for Agency Development Loans it has written off?

Draft Taxation Determination

Income tax: can a life assurance company claim a deduction or loss for Agency Development Loans it has written off?

1. No. The circumstances of the principal business of the life assurance company and the making of Agency Development Loans ('ADLs') and the capital nature of the amounts written off prevent the allowance of a deduction or a loss under either subsection 51(1), the former sections 111A and 111AA, paragraph 63(1)(b) or paragraph 160 M(3)(b) of the *Income Tax Assessment Act 1936* (the Act).

2. Life assurance companies rely on their network of agents to introduce insurance business and to 'service' existing policyholders (see paragraph 6 of Taxation Ruling TR 93/38). ADLs are made by life assurance companies to their insurance agents in connection with the maintenance of the company's network of agents. ADLs are typically interest free or low interest loans. The loans may be used wholly or partly for private purposes (see paragraph 7 of TR 93/38).

3. A life assurance company may seek to claim deductions or losses for ADLs which have not been repaid or have been designated as 'doubtful' or even written off as 'bad'. Such claims may be made under various sections of the Act.

4. Subsection 51(1) precludes deductions for outgoings of capital or of a capital nature. As ADLs relate to the preservation of the life companies tied agent network they are regarded as part of the structural activities of life assurance companies that produce premiums. Therefore claims for deductions for ADLs written off are of a capital nature and not deductible under subsection 51(1).

5. Paragraph 63(1)(b) permits deductions for bad debts written off in respect of money lent in the ordinary course of the business of the lending of money by a taxpayer who carries on that business. Taxation Ruling TR 92/18 at paragraphs 42 to 46, in providing some general guidelines on the question of who is a 'moneylender', concludes that it would be sufficient for subsection 63(1)(b) purposes if a taxpayer lends money to certain classes of borrowers in a businesslike manner with a view to yielding a profit. However, a taxpayer would not be considered to be carrying on the business of moneylending if the lending of money 'is merely ancilliary or incidental to the primary business' *FC of T v. Marshall & Brougham Pty. Ltd* (1987) 17 FCR 541, 18 ATR 859 at 866; 87 ATC 4522 at 4528.

6. Generally, life assurance companies are in the business of life assurance and not as moneylenders (see paragraphs 20 to 22 of Taxation Ruling TR 93/27):

> 'A life assurance company lends money, and its lendings are very important, but they are not the essence of its business. They are operations ancilliary to the main business' *FC of T v. Australian Mutual Provident Society* (1953) 88 CLR 450 at 463-4; 10 ATD 53 at 157.

The ADLs are generally an ancilliary part of the business of life assurance companies. Also, as the ADLs are either no interest or low interest loans, they are not truly commercial loans in the sense that the money has not been lent in a businesslike manner with a view to yielding a profit from the activity. Therefore ADLs written off do not fall within subsection 63(1)(b).

7. Former sections 111A and 111AA deem superannuation and life assurance premiums to be assessable income for the purpose of determining the deductions available to a life assurance company. Former sections 111A and 111AA therefore generated the allowance of certain deductions against otherwise exempt premium income. ADLs do not relate to the gaining of premium income. Rather the ADLs relate to the preservation of a life assurance company's tied agent network. They are regarded as being on capital account and therefore do not fall within the scope of these sections.

8. The treatment of the capital amounts under Part 111A of the Act representing ADL's written off is a question of fact. To constitute a disposal, paragraph 160M(3)(b) requires:

> '... the cancellation, release, discharge, satisfaction, forfeiture, expiry or abandonment, at law or in equity, of the asset.'

It is not considered that the mere writing off of an ADL would constitute the change of ownership of an asset for the purposes of paragraph 160M(3)(b).

Commissioner of Taxation
19/5/94

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