


TD 96/D7 - Income tax: can a deduction be claimed under section 75B of the Income Tax Assessment Act 1936 for part of the purchase price of a property if the contract allocates the price to relevant existing structural improvements?

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This document has been finalised by TD 96/40.

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: can a deduction be claimed under section 75B of the *Income Tax Assessment Act 1936* for part of the purchase price of a property if the contract allocates the price to relevant existing structural improvements?

1 No.

2. Section 75B provides a deduction for certain expenditure of a capital nature incurred for the purpose of conserving or conveying water. In particular, subsection 75B(3A) provides that the expenditure must be incurred on the construction, acquisition or installation of plant or a structural improvement for the purpose of conserving or conveying water.

3. The Commissioner does not consider that expenditure has been incurred on the construction, acquisition or installation of relevant plant or structural improvements if a taxpayer does no more than purchase a property under a contract that allocates part of the consideration towards existing structural improvements.

4. This view is supported by the decision of the Administrative Appeals Tribunal in *AAT Case W9 89 ATC 178*; *AAT Case 4852* (1988) 20 ATR 3191. In that case, the Tribunal stated:

'...s 75B requires a purposive element and expenditure by the taxpayer himself on improving the land in the relevant statutory respects, and not just the acquisition of land from somebody else who has already spent that money...' (ATC 182, ATR 3195).

Example

Jack and Jill purchase a property with an existing dam. The contract allocates \$100,000 towards the acquisition of the dam.

No deduction is allowable under section 75B in respect of the \$100,000 payment. This payment is not expenditure that satisfies the requirements of subsection 75B(3A).

Commissioner of Taxation

17 July 1996

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: IT 252; IT 2301; IT 2394

Subject Ref:

Legislative Ref: ITAA 75B; ITAA 75B(3A)

Case Ref: AAT Case W9 89 ATC 178; AAT Case 4852 (1988) 20 ATR 3191

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