



TD 1999/1 - Income tax: are deductions under Division 43 of the Income Tax Assessment Act 1997 (ITAA 1997) excluded by subsection 82(2) of the Income Tax Assessment Act 1936 (ITAA 1936) in calculating any assessable profit or deductible loss from the sale of the property by the person who constructed the building?

 This cover sheet is provided for information only. It does not form part of *TD 1999/1 - Income tax: are deductions under Division 43 of the Income Tax Assessment Act 1997 (ITAA 1997) excluded by subsection 82(2) of the Income Tax Assessment Act 1936 (ITAA 1936) in calculating any assessable profit or deductible loss from the sale of the property by the person who constructed the building?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *24 March 1999*

Taxation Determination

Income tax: are deductions under Division 43 of the *Income Tax Assessment Act 1997* (ITAA 1997) excluded by subsection 82(2) of the *Income Tax Assessment Act 1936* (ITAA 1936) in calculating any assessable profit or deductible loss from the sale of the property by the person who constructed the building?

Preamble

The number, subject heading, date of effect and paragraph 1 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is binding on the Commissioner.

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does 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).

1. Yes. In broad terms, the basic purpose of section 82 of the ITAA 1936 is to lay down a general rule that only one deduction is allowed to a taxpayer for the one amount of expenditure in circumstances where deductions would otherwise be allowable under both the general and special provisions of the Act. Subsection 82(2) provides that, where the profit arising from the sale of any property is included in the assessable income of any person, or where the loss arising from the sale is an allowable deduction, any expenditure incurred in connection with that property which has been allowed or is allowable as a deduction shall not be deducted in ascertaining the amount of the profit or loss.
2. In the absence of subsection 82(2) it would be possible to claim a deduction under Division 43 of the ITAA 97 and take the same expenditure into account in calculating the assessable profit or deductible loss on the sale of a property.
3. Division 43 of the ITAA 97 allows deductions for certain capital expenditure on assessable income producing buildings and other capital works.
4. Accordingly, a deduction under Division 43 is a deduction for 'any expenditure incurred ... in connexion with that property' for the purposes of subsection 82(2) of the ITAA 36. As such, the expenditure for which a deduction is allowed or is allowable is excluded by subsection 82(2) from the calculation of any assessable profit or deductible loss on the sale of the property.

5. *This Determination refers to Division 43 of the ITAA 97 which expresses the same ideas as Division 10D and sections 124ZH and 124ZG of the ITAA 36.*

Example

6. *A taxpayer constructs a building for \$60m which it leases, and claims deductions for certain capital expenditure under Division 43. Because of the particular business of the taxpayer, any profit on a subsequent sale of the property will be assessable.*
7. *The taxpayer sells the property for \$70m.*
8. *At the time of sale, the taxpayer has claimed Division 43 deductions of \$2m.*
9. *The amount of \$2m represents expenditure incurred in connection with the property for which a deduction has been allowed under Division 43. Consequently, it is excluded by subsection 82(2) from the calculation of the assessable profit.*
10. *Accordingly, the assessable profit is \$12m (i.e., \$70m - (\$60m - \$2m)).*

Commissioner of Taxation

24 March 1999

Previous draft:

TD 98/D5

Related Rulings/Determinations:

Subject references:

allowable deductions; capital expenditure; double deductions; losses; profit; sale of property

Legislative references:

ITAA36 Div 10D; ITAA36 82; ITAA36 82(2); ITAA36 124ZG; ITAA36 124ZH; ITAA97 Div 43; ITAA97 43-10

Case references:

ATO References:

NO 98/2475-8

BO

FOI number: I 1018333

ISSN: 1038-8982