



TD 2004/25 - Income tax: do moneys used to acquire financial securities or which are otherwise set aside to fund a guaranteed return to investors satisfy the 'expended directly' requirement of Division 10BA of Part III of the Income Tax Assessment Act 1936?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *25 June 2008*



Taxation Determination

Income tax: Do moneys used to acquire financial securities or which are otherwise set aside to fund a guaranteed return to investors satisfy the 'expended directly' requirement of Division 10BA of Part III of the *Income Tax Assessment Act 1936*?

Preamble

*The number, subject heading, date of effect and paragraphs 1, 2, 4 and 5 of this document are a 'public ruling' for the purposes of Part IVA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

1. No.
2. Division 10BA of the *Income Tax Assessment Act 1936* (ITAA 1936) authorises a deduction to a resident taxpayer for capital expenditure outlaid in the production of a qualifying Australian film where the taxpayer becomes one of the first owners of the copyright in the film. Subsection 124ZAF(1) of the ITAA 1936 limits the amount of the deduction to capital moneys expended in producing, or contributed to the cost of producing, a film. Subsection 124ZAA(6) of the ITAA 1936 provides that a deduction is only available 'to the extent to which those moneys are expended *directly* in producing a film' (emphasis added). The practical application of the 'expended directly' requirement is explained at paragraphs 7 to 10 of Taxation Ruling IT 2111.
3. A common feature of many film investment proposals is the setting aside of a proportion of an investor's subscribed capital to fund a guaranteed return to the investor. For example, a proportion of the investment is used to purchase financial securities such as letters of credit and/or certificates of deposit in order to fund the guaranteed return. On maturity, the investment proceeds are used to repay in whole or in part the amount invested.
4. Moneys used to acquire securities or which are otherwise set aside for the purpose of funding a guaranteed return to an investor do not satisfy the 'expended directly' requirement of Division 10BA.

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5. As stated in paragraph 8 of Taxation Ruling IT 2111:

‘Direct expenses of a film production which qualify for deduction under section 124ZAFA can generally be described as those relating to the production process...Such expenses would typically include amounts paid for the acquisition of story rights and the surveying of locations, payments to producers, directors and cast, and the costs of insurance of production associated risks, drawing up performers’ contracts and the building of sets and scenery.’

It is the Tax Office view that moneys expended for the purpose of funding the acquisition of financial securities or which are otherwise set aside to fund a guaranteed return cannot be accepted as expenditure relating to the production process of a film.

Example

6. *Kate invests \$10,000 towards the production of a qualifying Australian film. \$7,000 of her contribution is applied to the purchase of financial securities with a face value of \$10,000. On maturity, the \$10,000 proceeds are paid to Kate as a guaranteed return.*

7. *Because only \$3,000 of her total investment was available to be applied towards the cost of producing the film, Kate’s maximum Division 10BA deduction entitlement is limited to \$3,000.*

Date of Effect

8. This Determination applies to years commencing both before and after its date of issue. However, it 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 the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Note: as part of the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*, Division 10BA is being phased out as follows:

- applications for certificates under Division 10BA will not be accepted after 25 September 2007;
- a deduction under Division 10BA is not allowable in relation to the 2009-10 year of income or a later year of income.

Commissioner of Taxation

7 July 2004

Previous draft:

TD 2004/D8

Related Rulings/Determinations:

TR 92/20; IT 2111

Legislative references:

- TAA 1953 Pt IVA
- ITAA 1936 Div 10BA of Pt III
- ITAA 1936 124ZAA(6)
- ITAA 1936 124ZAFA

- ITAA 1936 124ZAFA(1)
 - Tax Laws Amendment (2007 Measures No. 5) Act 2007
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ATO references

NO: 2003/12276

ISSN: 1038-8982