

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: are the rights of a creditor in the following circumstances limited in the manner specified in subsection 51AD(8) of the *Income Tax Assessment Act 1936*, or capable of being so limited?

Example:

A taxpayer, X Co, with substantial assets finances the acquisition cost of plant predominantly with debt from Y Co. The property is leased to a tax exempt body for 10 years.

The debt principal is repayable in 10 years and is secured against all the assets of X Co. Under the arrangement between X Co and Y Co, Y Co agrees to release the security over all the assets apart from the leased property at the end of the second year of the lease provided no default event occurs.

1. Section 51AD denies deductions relating to the ownership of certain property the whole or a predominant part of the cost of which has been financed by non-recourse debt. As specified in paragraph 51AD(8)(a), a non-recourse debt is debt where the rights of the creditor against the taxpayer in the event of default are limited wholly or predominantly to rights against the property itself, or against the income, goods or services generated by the property, or to rights in respect of a security over the property. Under paragraph 51AD(8)(b), debt will also be non-recourse debt if the Commissioner is of the opinion that the rights of the creditor are capable of being limited in the manner specified in paragraph 51AD(8)(a), having regard to the taxpayer's assets or any arrangement to which the taxpayer is a party.

2. In the circumstances outlined in the Example, the rights of Y CO as against X Co are limited in terms of paragraph 51AD(8)(a) or are capable of being limited as mentioned in paragraph 51AD(8)(b). The debt constitutes non-recourse debt for the purposes of section 51AD.

Commissioner of Taxation

20/08/92

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Related Determinations: TD 92/137, TD 92/138

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Legislative Ref: ITAA 51AD(8)(a); ITAA 51AD(8)(b)

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