


TD 92/190 - Income tax: is the installation cost of an in-ground swimming pool an allowable deduction to a primary producer if the water is used on occasions for fire fighting purposes?

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This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA 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: is the installation cost of an in-ground swimming pool an allowable deduction to a primary producer if the water is used on occasions for fire fighting purposes?

1. No. The installation cost of an in-ground swimming pool is not an allowable deduction under subsection 51(1) of the *Income Tax Assessment Act 1936*. It is not an outgoing necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income and, it is an outgoing of a capital, private or domestic nature.
2. The installation cost of the in-ground swimming pool is not an allowable deduction under section 75B. The in-ground swimming pool is not used primarily and principally for the purpose of conserving or conveying water.
3. The installation cost of the in-ground swimming pool is not depreciable under section 54 as it is not plant or articles for depreciation purposes. The in-ground swimming pool is a permanent structure which is not an integral part of the farming operations which produce assessable income (*IRC v. Barclay Curle and Co. Ltd.* [1969] 1All ER 732); cf (*Cooke v. Beach Station Caravans Ltd* [1974] 3 All ER 159; paragraph 39 in Taxation Ruling IT 2343; Taxation Ruling IT 2685).
4. No deduction is allowable under Division 10D for expenditure incurred in constructing the pool. The pool is part of the primary producer's home and, therefore, deemed not to be used by that person for the purpose of producing assessable income (subsections 124ZF(4A) and 124ZF(6A)).

Example:

Joe Farmer, a primary producer, installs near his home, an in-ground swimming pool and uses it for recreation. The pool is equipped with an extra pump which is to be solely used in an emergency for fire fighting purposes. The cost of installing the pool is not an allowable deduction. The cost of the extra pump for fire fighting purposes is expenditure to which subsection 75B(3A) applies. Therefore, Joe Farmer will be entitled to a deduction under subsection 75B(3B) of one third of the cost of the extra pump in the year in which the expenditure is incurred and in the two subsequent years.

Commissioner of Taxation

19/11/92

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