# *TD 93/118 - Income tax: over what period are two or more prepayments under the same agreement apportioned in terms of section 82KZM of the Income Tax Assessment Act 1936 ?*

This cover sheet is provided for information only. It does not form part of *TD 93/118 - Income tax: over what period are two or more prepayments under the same agreement apportioned in terms of section 82KZM of the Income Tax Assessment Act 1936 ?*

**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, 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 a 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).**

# Taxation Determination

## Income tax: over what period are two or more prepayments under the same agreement apportioned in terms of section 82KZM of the *Income Tax Assessment Act 1936*?

1. A prepayment is not apportioned but is allowed in full as a deduction under subsection 51(1) in the year in which it is incurred if all the services in respect of the prepayment are to be provided within 13 months after the day on which the expenditure is incurred.

2. Under section 82KZM, if a prepayment is made under an agreement entered into after 25 May 1988 for the doing of a thing that is not to be wholly done within 13 months after the day on which the expenditure is incurred, then the prepayment is apportioned over the period to which it relates, unless it is excluded expenditure as defined in subsection 82KZL(1).

3. Excluded expenditure includes an amount of expenditure less than $1,000.

4. If two or more prepayments of less than $1,000 each are made for the purpose of preventing the application of the apportionment rules of section 82KZM, then the general anti-avoidance provisions of Part IVA may be invoked to deny the intended tax advantage.

5. If two or more prepayments of $1,000 or more each are made under an agreement, the period to which each payment relates has to be identified to determine whether section 82KZM applies.

*Example 1.*
*Taxpayer A enters into an agreement to commence on 1 July 1992 with an eligible service period as defined in subsection 82KZL(1) of 18 months (549days). The payments under the agreement are $100 per month.*

*The Taxpayer makes prepayments as follows:*

*1 July 1992 $900*
*1 August 1992 $900*

*The prepayments are made in the above amounts to exploit the threshold of subsection 82KZL(1) for the purpose of avoiding apportionment under section 82KZM.*

*Because each prepayment is less than $1,000, the expenditure is excluded from the application of the apportionment rules. A Part IVA determination may however be made which would deny the tax benefit that would be obtained if a $1,800 deduction was allowed in relation to the 1992-93 year of income.*

*The deduction allowable each year would be as follows:*

| | | |
|---|---|---|
| *Year ended 30/6/93* | *$1197* | *( $1,800 x 365/549)* |
| *Year ended 30/6/94* | *$ 603* | *( $1,800 x 184/549)* |

*Example 2*
*Taxpayer B enters into an agreement on the 30 June 1992 which is for a period of 25 months commencing on 1 July 1992. The payments are $1000 per month.*

*She makes a prepayment of 13 months ($13,000) on the 30 June 1992 and a further prepayment for the balance of the agreement ($12,000) on the 1 July 1992.*

*The $13,000 prepayment is allowable in full in the year in which it is incurred as all the services in respect of the prepayment will be provided within 13 months after the day on which the expenditure is incurred.*

*The $12,000 prepayment relates to the period 1 August 1993 to 31 July 1994 (365 days). As all the services to which the $12,000 prepayment relate will not be wholly done within 13 months after the day on which this expenditure is incurred, then this prepayment is apportioned over the period to which it relates, as set out below.*

*The deduction allowable to Taxpayer B in each year of income is as follows:*

| | | |
|---|---|---|
| *Year ended 30/6/92* | *$13,000* | |
| *Year ended 30/6/93* | *NIL* | |
| *Year ended 30/6/94* | *$10,981* | *($12,000 x 334/365)* |
| *Year ended 30/6/95* | *$ 1,019* | *($12,000 x 31/365)* |

**Commissioner of Taxation**
24/6/93

FOI INDEX DETAIL: Reference No. I 1215028 Previously issued as Draft TD92/D221
Related Determinations: TD 93/117, TD 93/D119
Related Rulings:
Subject Ref: insurance; interest; leases; prepayments
Legislative Ref: ITAA 51(1); ITAA 82KZL; ITAA 82KZM; Part IVA
Case Ref:
ATO Ref: NEW TD30

ISSN 1038 - 8982