

TD 93/119 - Income tax: does an annual payment under an agreement that is high in relation to subsequent payments under the same agreement have to be 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 93/119 - Income tax: does an annual payment under an agreement that is high in relation to subsequent payments under the same agreement have to be 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: does an annual payment under an agreement that is high in relation to subsequent payments under the same agreement have to be apportioned in terms of section 82KZM of the *Income Tax Assessment Act 1936*?

1. Yes. Section 82KZM apportions certain prepaid expenditure, which would otherwise be fully deductible under subsection 51(1), over the period to which it relates. The expenditure to which the section applies is that incurred under an agreement which was entered into after 25 May 1988, and is for the doing of a thing which is not to be wholly done within 13 months after the day on which the expenditure is incurred, unless it is excluded expenditure. Excluded expenditure is defined in subsection 82KZL(1).
2. An arbitrary percentage cannot be applied to determine whether or not a payment is high. A payment is considered to be high in relation to subsequent payments when it is a greater amount than any subsequent payment. Whether the expenditure is incurred in return 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 is a question of fact to be answered on the individual circumstances of each case.
3. If a high payment has the effect of reducing the subsequent payments, then it is considered to be a 'balloon' payment and section 82KZM applies to spread the deductibility of this high payment over the period to which it relates, which is usually the entire period of the agreement.
4. If a payment is high in relation to subsequent payments, but this Office does not consider that it has the effect of reducing those subsequent payments, then the provisions of section 82KZM may not apply. For example, in a lease agreement a higher annual payment in relation to subsequent annual payments may reflect a higher value of the asset in the initial period of the lease. In this type of situation section 82KZM would not apply.
5. In the past this Office has communicated consistently to a wide range of taxpayers a treatment which was more favourable than the approach taken in this Determination. Accordingly (as per paragraph 16 of Taxation Ruling TR92/20) this Determination will only apply to prepaid expenditure incurred under an agreement entered into after the date of this Determination.

Example:

A loan is taken out over a five year period (1827 days) commencing on 30/6/91. Interest payments are due on the 30th June each year and are \$100,000 for the first year, then \$20,000 for each of the next four years.

There is no reason acceptable to this Office for the first payment to be higher than the subsequent payments.

As the payments for the subsequent twelve month periods are \$20,000 each, then it is considered that only \$20,000 of the first payment of \$100,000 relates directly to the first twelve months.

The balance of \$80,000 is considered to be a balloon payment which relates to services (the provision of the loan capital) which are to be provided over the entire period of the loan. This amount is therefore apportioned under section 82KZM.

The deduction allowed in each year is as follows:

| | | |
|------------------------------|-----------------|---------------------------------------------------------------------|
| <i>Year ended 30/6/91</i> | <i>\$20,044</i> | <i>$(\\$20,000 + \\$80,000 \times \frac{1}{1827})$</i> |
| <i>Year ended 30/6/92</i> | <i>\$36,027</i> | <i>$(\\$20,000 + \\$80,000 \times \frac{366}{1827})$</i> |
| <i>Years ended 30/6/93-5</i> | <i>\$35,982</i> | <i>$(\\$20,000 + \\$80,000 \times \frac{365}{1827})$</i> |
| <i>Year ended 30/6/96</i> | <i>\$15,983</i> | <i>$(NIL + \\$80,000 \times \frac{365}{1827})$</i> |

Commissioner of Taxation

24/6/93

FOI INDEX DETAIL: Reference No. I 1215340

Previously issued as Draft TD 93/D226

Related Determinations: TD 93/117, TD 93/118

Related Rulings:

Subject Ref: insurance; interest; leases; prepayments,

Legislative Ref: ITAA 51(1), ITAA 82KZL; ITAA 82KZM

ATO Ref: NEWTD28

ISSN 1038 - 8982