TD 93/145W - Income tax: is an employee entitled to a deduction for depreciation in relation to an item of plant used for income producing activities when he or she is subsequently reimbursed for the cost of the item?

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Notice of Withdrawal

Taxation Determination

Income tax: is an employee entitled to a deduction for depreciation in relation to an item of plant used for income producing activities when he or she is subsequently reimbursed for the cost of the item?

Taxation Determination TD 93/145 is withdrawn with effect from today.

1. The Determination explains that section 51AH of the *Income Tax Assessment Act 1936* (ITAA 1936) does not operate to reduce an employee's deduction for depreciation where the employee is reimbursed in respect of an amount of a tax deductible work related expense.

2. The Determination justified this position on the basis that a reimbursement to an employee for the cost of an item of plant was not 'in respect of a deductible loss or outgoing allowed or allowable to the employee'.

3 The Determination was written in the context of the depreciation provisions as they existed in the ITAA 1936. The reasons underpinning the Determination are no longer applicable in the context of Division 40 of the *Income Tax Assessment Act 1997* (ITAA 1997) which is the replacement for the provisions dealing with depreciation. This is particularly so given the amendments to Subdivision 20-A of ITAA 1997 which were made when Division 40 was introduced. Those amendments ensured that Division 40 deductions are deductions 'for a loss or outgoing' in respect of which there can be an assessable recoupment.

3. The Determination will be replaced with a new Taxation Determination which provides different reasoning. The effect of TD 93/145 will be maintained in TD 2005/D17.

Commissioner of Taxation
29 June 2005

ATO references

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