



TD 94/50 - Income tax: are legal fees and other professional fees incurred in relation to the construction of an infrastructure facility able to be financed by infrastructure borrowings under section 159GZZZZA of the Income Tax Assessment Act 1936?

 This cover sheet is provided for information only. It does not form part of *TD 94/50 - Income tax: are legal fees and other professional fees incurred in relation to the construction of an infrastructure facility able to be financed by infrastructure borrowings under section 159GZZZZA of the Income Tax Assessment Act 1936?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *16 June 1994*

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: are legal fees and other professional fees incurred in relation to the construction of an infrastructure facility able to be financed by infrastructure borrowings under section 159GZZZZA of the *Income Tax Assessment Act 1936*?

1. For the purposes of section 159GZZZZA, in order for expenditure to be financed by way of infrastructure borrowings, the borrowed money must be spent on the construction of one or more infrastructure facilities or related facilities.
2. Legal expenses which are directly related to the actual physical construction of the facility, such as the construction contract, and architects' and consulting engineers' fees incurred in the course of construction are considered to be expenditure incurred in the construction of an infrastructure facility and are therefore, able to be paid for using infrastructure borrowings.
3. Certain other legal and professional fees which are not considered to be expenditure spent on the construction of an infrastructure facility include:
 - architects' and engineers' fees that are incurred in undertaking feasibility studies, even if the project goes ahead;
 - costs incurred in financing construction, such as debt establishment fees, stamp duty on loan documentation, legal fees relating to the loan documentation and fees paid to investment bankers;
 - development fees paid to reimburse and reward work done in winning tenders;
 - expenditure incurred in drafting joint venture or partnership agreements; and
 - legal fees incurred in negotiating leases.

FOI INDEX DETAIL: Reference No. I 1217494

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Related Determinations: TD 94/49, TD 94/51, TD 94/52, TD 94/53

Related Rulings: IT 2442

Subject Ref: architect's fees; engineer's fees; debt establishment fees; development fees; infrastructure borrowing; legal expenses; stamp duty

Legislative Ref: ITAA 159GZZZZA(1); ITAA 159GZZZZA(2); ITAA 159GZZZZA(3)(a)

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