



TD 94/83 - Income tax: property development: who is a 'qualified person' to make an estimate of the actual cost of construction of a building for the purposes of Division 10D of Part III of the Income Tax Assessment Act 1936 ?

 This cover sheet is provided for information only. It does not form part of *TD 94/83 - Income tax: property development: who is a 'qualified person' to make an estimate of the actual cost of construction of a building for the purposes of Division 10D of Part III 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 *13 October 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: property development: who is a 'qualified person' to make an estimate of the actual cost of construction of a building for the purposes of Division 10D of Part III of the *Income Tax Assessment Act 1936*?

1. A deduction is allowable under section 124ZH in respect of capital expenditure incurred on the construction of, or an extension, alteration or improvement to certain income-producing buildings. Section 124ZG identifies what amounts of capital expenditure will be regarded as qualifying expenditure for the purposes of Division 10D.
2. In circumstances where a taxpayer is genuinely unable to determine precisely the actual cost of the building, we accept that an estimate of the cost of construction by a quantity surveyor or 'other independent qualified person' may be used: see paragraph 19 of Taxation Ruling IT 2640. However, some doubt has arisen as to who will be accepted as a 'qualified person'.
3. We consider that a qualified person is someone who has expertise in the calculation of building construction costs and who would be likely to be accepted by a court or tribunal as an expert witness on the issue of calculating the cost of construction of the relevant building. That expertise may have been acquired through a course of study or relevant experience in providing building cost estimates over a significant period of time.
4. The attainment of relevant professional qualifications or recognition by an appropriate professional association or organisation would be indicative of expertise in this field.
5. Unless they are otherwise qualified, valuers, real estate agents, accountants and solicitors generally have neither the relevant qualifications nor experience to make such an estimate.
6. Appropriately qualified people might include:
 - a clerk of works, such as a project organiser for major building projects;
 - a supervising architect who approves payments at each stage in major projects and who may approve individual payments to subcontractors in smaller projects; or
 - a builder who is experienced in estimating construction costs of similar building projects.

7. The question of whether a person has the required expertise will be an issue of fact in each case.

8. The use of published building cost guides to estimate the actual cost of construction will not be accepted, unless they are used merely as a guide by a suitably qualified person. The building cost guides typically provide a cost per square metre of a range of building projects. They are based on industry averages and will not be sufficiently specific to the particular building being valued.

9. The building cost guides also include a reasonable profit margin for the builder. However, the builder's profit margin does not form part of the cost of construction unless the original construction was commissioned from a builder, whose charges for the work would have included such a profit. Where the original construction was carried out directly by the then owner, or by that owner using trade subcontractors and perhaps an architect, no such builder's profit was incurred as part of the cost of construction.

NOTE:

10. Following the enactment of subsection 262A(4AH), which commenced operation on 30 June 1992, a person who disposes of, or of a lease of, any part of a building in respect of which there is post 26 February 1992 qualifying expenditure, may be required to provide a notice to the transferee containing information about the transferor's holding of the building. The purpose of the notice is to provide sufficient information to enable the transferee to work out how Division 10D will apply to them.

Commissioner of Taxation

13/10/94

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