



***TD 94/85 - Income tax: is a taxpayer entitled to a deduction under subsection 59(1) or any other section of the Income Tax Assessment Act 1936 when an item of plant is sold by an agent of the taxpayer and the proceeds of sale are misappropriated by the agent?***

 This cover sheet is provided for information only. It does not form part of *TD 94/85 - Income tax: is a taxpayer entitled to a deduction under subsection 59(1) or any other section of the Income Tax Assessment Act 1936 when an item of plant is sold by an agent of the taxpayer and the proceeds of sale are misappropriated by the agent?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *27 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).

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## Taxation Determination

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**Income tax: is a taxpayer entitled to a deduction under subsection 59(1) or any other section of the *Income Tax Assessment Act 1936* when an item of plant is sold by an agent of the taxpayer and the proceeds of sale are misappropriated by the agent?**

1. No. Unless the sale proceeds are less than the notional written down value, in which case a deduction will be allowable under subsection 59(1) for the difference between the notional written down value and the sale proceeds (see Example 2).
2. A deduction is not otherwise allowable under subsection 59(1) as the taxpayer has not lost the item of plant but the proceeds of its sale. Those proceeds were 'consideration receivable' by the taxpayer although they were received by the agent (*Case 109 (1951) 1 TBRD 461*).
3. Subsection 59(1) allows a deduction for a loss on disposal where the depreciated value is more at the time of sale than the amount of any 'consideration receivable' in respect of the disposal.
4. Paragraph 59(3)(a) defines 'consideration receivable' where property is sold as being the sale price less relevant expenses. As the item of plant was sold, albeit through an agent, paragraph 59(3)(a) is satisfied and the sale price less expenses is treated as being received by the taxpayer.
5. A deduction will also not be allowable under either section 63 or section 71 as a bad debt or loss, as any debt of this kind would not have been brought to account by the taxpayer as assessable income (paragraph 63(1)(a) and section 71).

### *Example 1*

*A taxpayer who is a director/shareholder in a private company which operates as a furniture manufacturer uses his car for his business. He authorises a friend to sell the car on his behalf and give him the proceeds. At the time the notional written down value is \$5,000. Instead, the friend uses the car as a trade-in and receives \$7,000 of which he gives the taxpayer nothing. The taxpayer is not entitled to a deduction of \$5,000 for a loss on disposal of the car as his friend was acting as his agent.*

*A deduction is also not allowable under either section 63 or section 71 as the value of the car would not have been brought to account by the taxpayer as assessable income.*

*Example 2*

*In the same scenario as in Example 1 above the friend only receives \$4,000 for the car of which he gives the taxpayer nothing. The taxpayer is entitled to a deduction of \$1,000 being the difference between the notional written down value and the sale proceeds. No deduction is allowable for the remaining \$4,000.*

**Commissioner of Taxation**

27/10/94

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FOI INDEX DETAIL: Reference No. I 1217901

Previously issued as Draft TD 93/D151

Related Determinations:

Related Rulings: IT 2398

Subject Ref: balancing charges; depreciation; plant; bad debt; misappropriation

Legislative Ref: ITAA 59; ITAA 59(1); ITAA 59(3)(a); ITAA 63; ITAA 63(1)(a); ITAA 71

Case Ref: *Case 109* (1951) TBRD 461

ATO Ref: UMG 0051; NAT 94/7455-2

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ISSN 1038 - 8982