


TD 96/40 - Income tax: can a deduction be claimed under section 75B of the Income Tax Assessment Act 1936 for part of the purchase price of a property if the contract allocates the price to relevant existing structural improvements?

 This cover sheet is provided for information only. It does not form part of *TD 96/40 - Income tax: can a deduction be claimed under section 75B of the Income Tax Assessment Act 1936 for part of the purchase price of a property if the contract allocates the price to relevant existing structural improvements?*



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: can a deduction be claimed under section 75B of the *Income Tax Assessment Act 1936* for part of the purchase price of a property if the contract allocates the price to relevant existing structural improvements?

1 No.

2. Section 75B provides a deduction for certain expenditure of a capital nature incurred for the purpose of conserving or conveying water. In particular, subsection 75B(3A) provides that the expenditure must be incurred on the construction, acquisition or installation of plant or a structural improvement for the purpose of conserving or conveying water.

3. The Commissioner does not consider that expenditure has been incurred on the construction, acquisition or installation of relevant plant or structural improvements if a taxpayer does no more than purchase a property under a contract that allocates part of the consideration towards existing structural improvements.

4. This view is supported by the decision of the Administrative Appeals Tribunal in *AAT Case W9 89 ATC 178*; *AAT Case 4852* (1988) 20 ATR 3191. In that case, the Tribunal stated:

'...s 75B requires a purposive element and expenditure by the taxpayer himself on improving the land in the relevant statutory respects, and not just the acquisition of land from somebody else who has already spent that money...' (ATC 182, ATR 3195).

Example

Jack and Jill purchase a property with an existing dam. The contract allocates \$100,000 towards the acquisition of the dam.

No deduction is allowable under section 75B in respect of the \$100,000 payment. This payment is not expenditure that satisfies the requirements of subsection 75B(3A).

Commissioner of Taxation18 September 1996

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Related Determinations:

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