



# ***TR 93/D3 (Withdrawn) - Income tax: co-operatives: the deductibility of dividends distributed***

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- *Income tax: co-operatives: the deductibility of dividends distributed*

 This document has been Withdrawn.

## Draft Taxation Ruling

### Income tax: co-operatives: the deductibility of dividends distributed.

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## What this Ruling is about

1. This Ruling explains:
  - (a) when is a dividend distributed;
  - (b) how much of the dividend distributed may be claimed as a deduction by the co-operative under subsection 120(1) of the Income Tax Assessment Act 1936; and
  - (c) what is the year in which a co-operative may claim a deduction for dividends distributed to its shareholders.
2. The Ruling does not consider the other provisions dealing with co-operatives under Division 9 of Part 3.

## Ruling

3. A dividend is distributed when paid or credited.
4. A co-operative is allowed a deduction up to its total assessable income for dividends distributed to its shareholders in a year of income. If a co-operative has other deductions it may be that a loss to be carried forward under section 80 A will be created.
5. A co-operative is allowed a deduction for dividends distributed in the year in which the dividends are either paid or credited to the shareholders.
6. If at any time during the year of income a co-operative ceases to be a co-operative for the purposes of Division 9, no deduction will be allowable for the dividends distributed.

# TR 93/D3

## Date of effect

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7. This Ruling has both a past and future application (see Taxation Ruling TR 92/20). However, it does not have a past application for a taxpayer who has agreed to a settlement of a dispute to the extent that the Ruling is less favourable than the settlement terms. To the extent that the Ruling is more favourable, it does not have a past application for the taxation years the subject of the settlement.

## Explanations

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### When a dividend is distributed

8. It will be accepted that a dividend is distributed when it is paid or credited. A dividend is credited if it has been declared, profits are appropriated to its payment, and the shareholder's account with the co-operative is credited in such a way that it may be drawn upon as and when the shareholder desires.

### How much of the dividend distributed can be claimed as a deduction by the co-operative

9. Dividends distributed to the extent of the total of the co-operative's assessable income can be claimed as a deduction. The High Court in *Ardmona Fruit Products Co-operative Co. Ltd. v FC of T* (1952) 86 CLR 530 at 534 referred to this in the following passage:

'Section 120(1) does not require that some identifiable portion of the assessable income shall be used to pay the rebates etc.. It simply makes the payments allowable deductions from the total assessable income of the year in which they are made.'

As a consequence any dividends distributed in excess of the total assessable income of the year in which they are made would not be an allowable deduction or form part of a loss to be carried forward under section 80A.

### The year a co-operative can claim a deduction for dividends distributed

10. To be deductible in any year of income the dividends must be either paid or credited to the shareholders in that year. Support for this can be found in the case of *Ardmona Fruit Products Co-operative Co. Ltd.* (supra) at 534 where the High Court held that to be deductible in

any year of income dividends must be either paid or become payable to the shareholders in that year.

11. It is accepted that a co-operative can claim a deduction in the year in which a dividend is credited even though payment occurs in the following year of income provided it can be shown a dividend has been declared, profits are appropriated to its payment, and the shareholder's account with the co-operative is credited in such a way that it may be drawn upon as and when the shareholder desires.

12. If distributions are either credited or paid after the end of the year of income they will be deductible in the following year of income.

## **Examples**

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### **Example 1**

13. During the year of income ended 30 June 1992 ABC Co-operative has total assessable income of \$100,000. The Board of Directors declares a dividend prior to the end of the year of income of \$120,000 and credits this amount to the shareholders account with the company. The Co-operative has other allowable deductions of \$50,000.

14. The deduction allowable to ABC Co-operative under subsection 120(1) is limited to \$100,000 for the year of income ended 30 June 1992. A loss to be carried forward of \$50,000, being the other allowable deductions, would result.

15. If the dividend is credited or declared subsequent to the year of income ended 30 June 1992, the deduction would only be allowable in the following year of income i.e. 30 June 1993.

### **Example 2**

16. If in the same example the ABC Co-operative ceased to be a co-operative for the purposes of Division 9 at any time during that year, no deduction would be allowable for the dividend distributed.

17. As no deduction is allowable under subsection 120(1) the Company would have a taxable income of \$50,000.

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ATO references

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- Ardmona Fruit Products Co-operative Co. Ltd. v. FC of T (1952) 86 CLR 530