



TD 1999/D102 (Withdrawn) - Income tax: are certificate holders under the infrastructure borrowings provisions of the Development Allowance Authority Act 1992 required to continue to lodge annual reports?

 This cover sheet is provided for information only. It does not form part of *TD 1999/D102 (Withdrawn) - Income tax: are certificate holders under the infrastructure borrowings provisions of the Development Allowance Authority Act 1992 required to continue to lodge annual reports?*

 This document has been Withdrawn.

Draft Taxation Determination

Income tax: are certificate holders under the infrastructure borrowings provisions of the *Development Allowance Authority Act 1992* required to continue to lodge annual reports?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

1. No. In keeping with the principles of self assessment and to assist with lowering the costs of compliance the Development Allowance Authority (the Authority) has decided not to seek lodgement of the annual progress report required by section 93ZE of the *Development Allowance Authority Act 1992* ('the Act').
2. In the absence of other factors the Authority will not apply section 93Z of the Act to cancel an infrastructure borrowing certificate for failure by the certificate holder to lodge the annual progress report unless the certificate holder has been specifically requested to do so by the Authority.
3. Section 93ZE of the Act requires the certificate holder to report annually, in writing, on things done in complying with the conditions attached to the certificate under paragraph 93R(b) or (c). These paragraphs refer to the certificate holder doing all the things intended to be done, at the time the application for a certificate was lodged, in relation to:
 - the raising, dealing with and spending of infrastructure borrowings; and
 - the construction, ownership, use, control and/or disposal of the infrastructure facilities.
4. The purpose of the annual progress report was to monitor compliance with the conditions under which the certificate was issued. The Authority has now decided that compliance with these conditions can more efficiently be monitored by the normal Australian Taxation Office audit process. If it is found at an audit that the conditions imposed by paragraphs 93R(b) or (c) of the Act have not been complied with then the Authority will be able to use the certificate cancellation powers available under section 93ZB of the Act.
5. The Authority has determined that the following are not considered to be breaches of the conditions attached to a certificate:

- the intended infrastructure bond interest rates have varied following agreement with the Australian Taxation Office,
- the intended construction schedule for the infrastructure facility has not been maintained however the variations are within industry expectations for the type of project concerned,
- the anticipated cash flow for the infrastructure facility, as advised to the Authority before the certificate was issued, has been varied as a result of a change in the commercial environment before the project has been completed, or has not been achieved following the commencement of commercial operations after completion of the project.

6. If a certificate holder is otherwise unable to maintain compliance with the conditions attached to a certificate then, under section 93S of the Act, the holder must apply to vary those conditions.

7. Similarly, a certificate holder must continue to apply under section 93U of the Act if the certificate is to be transferred to another party.

8. Further information, contact details and application forms are available from the Authority's webpage (www.ato.gov.au/daa).

Your comments

9. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by Date:	1 February 2000
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Commissioner of Taxation

24 November 1999

Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

Subject references:

infrastructure borrowings

Legislative references:

Development Allowance Authority Act 1992 93R, 93S, 93Z, 93ZB, 93ZE

Case references:

ATO references:

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