


***TD 2003/D7 - Income tax: an employee ('A') leases his private residence to his employer ('B'). A agrees to sacrifice an amount of salary and directs B to pay it to him as 'rent'. Are A's expenses relating to the property allowable deductions under paragraph 8-1(1)(a) of the Income Tax Assessment Act 1997?***

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This document has been finalised by TD 2004/26.

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## Draft Taxation Determination

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Income tax: an employee ('A') leases his private residence to his employer ('B'). A agrees to sacrifice an amount of salary and directs B to pay it to him as 'rent'. Are A's expenses relating to the property allowable deductions under paragraph 8-1(1)(a) of the *Income Tax Assessment Act 1997*?

### *Preamble*

*This document is a draft for industry and professional comment. As such, it represents the preliminary, though considered views of the Australian Taxation Office. This draft may not be relied on by taxpayers and practitioners as it is not a ruling for the purposes of Part IVAAA of the **Taxation Administration Act 1953**. It is only final Taxation Determinations that represent authoritative statements by the Australian Taxation Office.*

1. No. In order to be deductible under paragraph 8-1(1)(a) of the *Income Tax Assessment Act 1997* (ITAA 1997), a loss or outgoing must be incurred in gaining or producing your assessable income. It cannot be private or capital in nature and cannot be incurred in relation to gaining or producing exempt income.
2. A loss or outgoing is incurred in gaining or producing your assessable income if it is incidental and relevant to that end (*Ronpibon Tin N.L. & Tongkah Compound N.L. v. F C of T* (1949) 78 CLR 47; (1949) 8 ATD 431. See also *Lunney v. F C of T* (1958) 100 CLR 478; (1958) 11 ATD 404.
3. A will not be entitled to a deduction, irrespective of whether the purported salary sacrifice arrangement (SSA) is effective or ineffective<sup>1</sup>.
4. If the purported SSA is ineffective, the amount that A has agreed to sacrifice constitutes salary or wages which A is deemed to have received under subsection 6-5(4) of the ITAA 1997 when B deals with the salary entitlement on A's behalf or as A directs.
5. Losses or outgoings related to property are not incidental or relevant to gaining or producing A's salary or wage income and expenses relating to the property are not deductible to A.
6. If the purported SSA is effective, the amount of sacrificed salary is received by A as a fringe benefit. Losses and outgoings related to property are not incidental or relevant to gaining or producing a fringe benefit.

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<sup>1</sup> See Taxation Ruling TR 2001/10 which deals with the income tax and fringe benefits tax consequences of SSAs.

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7. Further, even where a sufficient connection can be found between the fringe benefit and the incurrence of property expenses, a fringe benefit is exempt income under subsection 23L(1) of the *Income Tax Assessment Act 1936*.

8. Paragraph 8-1(2)(c) of the ITAA 1997 provides that you cannot deduct a loss or outgoing to the extent that it is incurred in gaining or producing exempt income.

## Date of effect

9. It is proposed that when the final Determination is issued, it will apply before and after its date of issue. However, the final Determination will not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

## Your comments

10. We invite you to comment on this draft Taxation Determination. Please forward your comments to the contact officer by the due date.

**Due date:** 23 July 2003  
**Contact officer:** Catherine Lovell  
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**Commissioner of Taxation**  
25 June 2003

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### *Previous draft:*

Not previously issued in draft form

### *Related Rulings/Determinations:*

TR 92/20; TR 2001/10

### *Other References:*

Taxpayer Alert TA 2002/9

*Subject references:*

- deductions
- employee lease arrangements
- lease
- lease and lease back
- property expenses
- salary sacrifice arrangements

*Legislative references:*

- TAA 1953 Part IVAAA
- ITAA 1936 23L(1)
- ITAA 1997 6-5(4)
- ITAA 1997 8-1(1)(a)
- ITAA 1997 8-1(2)(c)

*Case references:*

- Lunney v. F C of T (1958) (1958) 100 CLR 478; 11 ATD 404
- Ronpibon Tin N.L. & Tongkah Compound N.L. v. F C of T (1949) 78 CLR 47; (1949) 8 ATD 431

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ATO references

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