

TD 2004/D8 - Income tax: Does expenditure on the acquisition of financial securities satisfy the 'expended directly' requirement of Division 10BA of Part III of the Income Tax Assessment Act 1936?

 This cover sheet is provided for information only. It does not form part of *TD 2004/D8 - Income tax: Does expenditure on the acquisition of financial securities satisfy the 'expended directly' requirement of Division 10BA of Part III of the Income Tax Assessment Act 1936?*

This document has been finalised by TD 2004/25.



Draft Taxation Determination

Income tax: Does expenditure on the acquisition of financial securities satisfy the ‘expended directly’ requirement of Division 10BA of Part III of the *Income Tax Assessment Act 1936*?

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.
2. Division 10BA of the *Income Tax Assessment Act 1936* (ITAA 1936) authorises a deduction to a resident taxpayer for capital expenditure outlaid in the production of a qualifying Australian film where the taxpayer becomes one of the first owners of the copyright in the film. Subsection 124ZAFA(1) of the ITAA 1936 limits the amount of the deduction to capital moneys expended in producing, or contributed to the cost of producing, a film. Subsection 124ZAA(6) of the ITAA 1936 provides that a deduction is only available ‘to the extent to which those moneys are expended *directly* in producing a film’ (emphasis added). The practical application of the ‘expended directly’ requirement is explained at paragraphs 7 to 10 of Taxation Ruling IT 2111.
3. A common feature of many film investment proposals is the setting aside of a proportion of an investor’s subscribed capital to purchase financial securities such as letters of credit and/or certificates of deposit in order to fund a guaranteed return to the investor. Typically, the securities are term securities purchased at a discount to their face value which is broadly equal to the investor’s subscribed capital. On maturity, the proceeds from the redemption of the securities are used to repay the amount invested.
4. Moneys used to acquire securities for the purpose of funding guaranteed returns to investors do not satisfy the ‘expended directly’ requirement of Division 10BA.

TD 2004/D8

5. As stated in paragraph 8 of Taxation Ruling IT 2111,
'Direct expenses of a film production which qualify for deduction under section 124ZAFA can generally be described as those relating to the production process...Such expenses would typically include amounts paid for the acquisition of story rights and the surveying of locations, payments to producers, directors and cast, and the costs of insurance of production associated risks, drawing up performers' contracts and the building of sets and scenery.'

In our view, expenditure for the purpose of funding the acquisition of financial securities cannot be accepted as expenditure relating to the production process of a film.

Example

6. *Kate invests \$10,000 towards the production of a qualifying Australian film. \$7,000 of her contribution is applied to the purchase of financial securities with a face value of \$10,000. On maturity, the \$10,000 proceeds are paid to Kate as a guaranteed return.*
7. *Because only \$3,000 of her total investment was available to be applied towards the cost of producing the film, Kate's maximum Division 10BA deduction entitlement is limited to \$3,000.*

Date of Effect

8. When the final Determination is issued, it is proposed to apply both before and after its date of issue. However, the 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 issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).]

Your comments

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

Due date: 2 June 2004

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Commissioner of Taxation

21 April 2004

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 92/20; IT 2111

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1936 Div 10BA
- ITAA 1936 Div 10BA of Pt III
- ITAA 1936 124ZAA(6)
- ITAA 1936 124ZAFA
- ITAA 1936 124ZAFA(1)

ATO references

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