


***TD 93/D151 - Income tax: is a taxpayer entitled to a deduction under subsection 59(1) of the Income Tax Assessment Act 1936 when an item of plant is sold by an agent of the taxpayer and the proceeds of sale are misappropriated by the agent?***

 This cover sheet is provided for information only. It does not form part of *TD 93/D151 - Income tax: is a taxpayer entitled to a deduction under subsection 59(1) of the Income Tax Assessment Act 1936 when an item of plant is sold by an agent of the taxpayer and the proceeds of sale are misappropriated by the agent?*

This document has been finalised by TD 94/85.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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**Income tax: is a taxpayer entitled to a deduction under subsection 59(1) of the *Income Tax Assessment Act 1936* when an item of plant is sold by an agent of the taxpayer and the proceeds of sale are misappropriated by the agent?**

1. No. The taxpayer has not lost the item of plant but the proceeds of its sale. Those proceeds were "consideration receivable" by the taxpayer although they were received by the agent (*Case 109*, (1951) 1 TBRD 461).
2. Subsection 59(1) allows a deduction for a loss on disposal where the depreciated value is less at the time of sale than the amount of any "consideration receivable" in respect of the disposal.
3. Paragraph 59(3)(a) defines "consideration receivable" where property is sold as being the sale price less relevant expenses. As the item of plant was sold, albeit through an agent, paragraph 59(3)(a) is satisfied and the sale price less expenses is treated as being received by the taxpayer.

### *Example*

*John Citizen uses a car for his business. He separates from his wife who is the co-owner of the car and authorises her to sell the car and give him half the proceeds. Instead she uses the car as a trade-in and gives her husband nothing. John is not entitled to a deduction for a loss on disposal of the car as his wife was acting as his agent.*

**Commissioner of Taxation**  
10/6/93

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FOI INDEX DETAIL: Reference No.

Related Determinations: TD 92/D213

Related Rulings: IT 2398

Subject Ref: balancing charges; depreciation; plant

Legislative Ref: ITAA s59

Case Ref: *Case 109* (1951) 1 TBRD 461

ATO Ref: UMG 0051

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ISSN 1038 - 8982