


TD 93/D247 - Income tax: where subsection 51AD(10) of the Income Tax Assessment Act 1936 applies, does it operate to reciprocally deny the derivation of relevant assessable income by a taxpayer?

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This document has been finalised by TD 94/3.

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.

Draft Taxation Determination

Income tax: where subsection 51AD(10) of the *Income Tax Assessment Act 1936* applies, does it operate to reciprocally deny the derivation of relevant assessable income by a taxpayer?

1. No. The deeming effect of subsection 51AD(10) is a 'statutory fiction' in the sense described by Griffith C.J. in *Muller v Dalgety & Co. Limited And Another* [1909] 9 C.L.R. 693 at 696. That fiction exists only to the extent necessary to give effect to Parliament's intention. The Explanatory Memorandum said that subsection 51AD(10) "...will operate to disallow deductions attributable to the ownership of property to which section 51AD applies. It will do this by stipulating that such property is to be taken as not being used or held for use by the taxpayer for the purpose of producing assessable income or in carrying on a business for that purpose".

2. Accordingly, any activities of the taxpayer which would have the purpose of gaining or producing assessable income or would constitute the carrying on of a business for that purpose would continue to be so characterised, notwithstanding the application of subsection 51AD(10), in determining the amount of assessable income derived by the taxpayer.

Commissioner of Taxation

23/9/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: Leveraged Arrangements; Public Infrastructure Projects

Legislative Ref: ITAA 51AD; ITAA 51AD(10)

Case Ref: *Muller v Dalgety & Co. Limited and Another* [1909] 9 CLR 693

ATO Ref: Public Infrastructure Unit DTD/08

ISSN 1038 - 8982