


***TD 94/D3 - Income tax: are legal fees and other professional fees incurred in relation to the construction of an infrastructure facility able to be financed by infrastructure borrowings under section 159GZZZZA of the Income Tax Assessment Act 1936 ?***

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This document has been finalised by TD 94/50.

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: are legal fees and other professional fees incurred in relation to the construction of an infrastructure facility able to be financed by infrastructure borrowings under section 159GZZZZA of the *Income Tax Assessment Act 1936*?**

1. For the purposes of section 159GZZZZA, in order for expenditure to be financed by way of infrastructure borrowings, the borrowed money must be spent on the construction of one or more infrastructure facilities or related facilities.
2. Legal expenses which are directly related to the actual physical construction of the facility, such as the construction contract, and architects' and consulting engineers' fees incurred in the course of construction are considered to be expenditure incurred in the construction of an infrastructure facility and are therefore, able to be paid for using infrastructure borrowings.
3. Certain other legal and professional fees which are not considered to be expenditure spent on the construction of an infrastructure facility include:
  - architects' and engineers' fees that are incurred in undertaking feasibility studies, even if the project goes ahead;
  - costs incurred in financing construction, such as debt establishment fees, stamp duty on loan documentation, legal fees relating to the loan documentation and fees paid to investment bankers;
  - development fees paid to reimburse and reward work done in winning tenders;
  - expenditure incurred in drafting joint venture or partnership agreements; and
  - legal fees incurred in negotiating leases.

**Commissioner of Taxation**

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FOI INDEX DETAIL: Reference No.

Related Determinations: ;

Related Rulings: IT 2442

Subject Ref: infrastructure borrowings; legal expenses; public infrastructure projects

Legislative Ref: ITAA 159GZZZZA(1); ITAA 159GZZZZA(2); ITAA 159GZZZZA(3)(a)

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