


TD 98/D5 - Income tax: are deductions under Division 10D of the Income Tax Assessment Act 1936 ('the Act') excluded by subsection 82(2) in calculating any assessable profit or deductible loss from the sale of any property?

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This document has been finalised by TD 1999/1.

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: are deductions under Division 10D of the *Income Tax Assessment Act 1936* ('the Act') excluded by subsection 82(2) in calculating any assessable profit or deductible loss from the sale of any property?

1. Yes. In broad terms, the basic purpose of section 82 of the Act is to lay down a general rule that only one deduction is allowed to a taxpayer for the one amount of expenditure in circumstances where deductions would otherwise be allowable under both the general and special provisions of the Act. Subsection 82(2) provides that, where the profit arising from the sale of any property is included in the assessable income of any person, or where the loss arising from the sale is an allowable deduction, any expenditure incurred in connection with that property which has been allowed or is allowable as a deduction shall not be deducted in ascertaining the amount of the profit or loss.

2. In the absence of subsection 82(2) it would be possible to claim a deduction under Division 10D and take the same expenditure into account in calculating the assessable profit or deductible loss on the sale of a building.

3. Section 124ZH allows a deduction for part of the 'qualifying expenditure'. The term 'qualifying expenditure' is defined in section 124ZG as 'expenditure of a capital nature [incurred] in respect of the construction of a building ... or in respect of the construction of an extension, alteration or improvement to a building ...'.

4. Accordingly, a deduction under section 124ZH is a deduction for 'any expenditure incurred ... in connexion with that property' for the purposes of subsection 82(2). As such, the expenditure for which a deduction is allowed or is allowable is excluded by subsection 82(2) from the calculation of any assessable profit or deductible loss on the sale of the property.

5. This Determination refers to Division 10D and sections 124ZH and 124ZG of the Act which express the same ideas as Division 43 of the *Income Tax Assessment Act 1997*.

Example

6. *A property developer constructs a building for \$60m which it leases, and claims deductions for qualifying expenditure under Division 10D. Because of the particular business of the taxpayer, any profit on a subsequent sale of the property will be assessable.*

7. *The taxpayer sells the property for \$70m.*

8. *At the time of sale, the taxpayer has claimed Division 10D deductions of \$2m.*
9. *The amount of \$2m represents expenditure incurred in connection with the property for which a deduction has been allowed under Division 10D. Consequently, it is excluded by subsection 82(2) from the calculation of the assessable profit.*
10. *Accordingly, the assessable profit is \$12m (i.e., \$70m - (\$60m - \$2m)).*

Your comments

11. If you want to comment on this draft Determination, please send your comments by **Friday 3 July 1998** to:

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Commissioner of Taxation

3 June 1998

FOI INDEX DETAIL: [Reference No.](#)[Related Determinations:](#)[Related Rulings:](#)[Subject Ref:](#) allowable deductions; capital expenditure; double deductions; losses; profits; qualifying expenditure; sale of property[Legislative Ref:](#) ITAA Div 10D; ITAA36 82; ITAA36 82(2); ITAA36 124ZH; ITAA36 124ZH; ITAA97 Div 43[Case Ref:](#)[ATO Ref:](#) NAT 98/2475-8

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