



TD 1999/1W - Income tax: are deductions under Division 43 of the Income Tax Assessment Act 1997 (ITAA 1997) excluded by subsection 82(2) of the Income Tax Assessment Act 1936 (ITAA 1936) in calculating any assessable profit or deductible loss from the sale of the property by the person who constructed the building?

 This cover sheet is provided for information only. It does not form part of *TD 1999/1W - Income tax: are deductions under Division 43 of the Income Tax Assessment Act 1997 (ITAA 1997) excluded by subsection 82(2) of the Income Tax Assessment Act 1936 (ITAA 1936) in calculating any assessable profit or deductible loss from the sale of the property by the person who constructed the building?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *26 March 2003*

Notice of Withdrawal

Income tax: are deductions under Division 43 of the *Income Tax Assessment Act 1997* ('ITAA 1997') excluded by subsection 82(2) of the *Income Tax Assessment Act 1936* ('ITAA 1936') in calculating any assessable profit or deductible loss from the sale of the property by the person who constructed the building?

Taxation Determination TD 1999/1 is withdrawn with effect from today.

The views in TD 1999/1 conflict with the views expressed by the Federal Court in *MLC Limited & Anor v. Deputy Commissioner of Taxation* [2002] FCA 1491. That case held that the criterion for the deduction for building allowance under Division 10D of the ITAA 1936 (rewritten as Division 43 of the ITAA 1997) is not *expenditure incurred* but the use of the building as non-residential premises for the purposes of gaining assessable income. As a consequence, the court held that the building allowance deductions are not excluded by the operation of subsection 82(2) of the ITAA 1936 in the calculation of any assessable profit or deductible loss arising from the sale of the property.

Commissioner of Taxation

26 March 2003

ATO References

NO: 2002/011971

ISSN: 1038-8982