



TD 2000/46 - Income tax : will the Commissioner exercise his discretion under subsection 27H (3) of the Income Tax Assessment Act 1936 (ITAA 1936) to determine a deductible amount (representing the undeducted purchase price) for old age , widows , widowers and orphans pensions paid under the Netherlands Social Insurance system ?

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 This determination contains references to repealed provisions, some of which may have been re-enacted or remade. The determination has effect in relation to the re-enacted or remade provisions. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. Australia's tax treaties and other agreements except for the Taipei Agreement are set out in the Australian Treaty Series. The citation for each is in a note to the applicable defined term in sections 3AAA or 3AAB of the International Tax Agreements Act 1953.



Taxation Determination

Income tax: will the Commissioner exercise his discretion under subsection 27H(3) of the *Income Tax Assessment Act 1936* (ITAA 1936) to determine a deductible amount (representing the undeducted purchase price) for old age, widows, widowers and orphans pensions paid under the Netherlands Social Insurance system?

Preamble

*The number, subject heading, date of effect and paragraph 1 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

Date of Effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Yes. The Commissioner will accept an amount equal to 25% of the gross annual pension as the deductible amount for those pensions.
2. Article 18 of the Australia/Netherlands Double Tax Agreement¹ provides for the taxation of public social security system pensions only in the recipient's country of residence. Therefore, pensions received by Australian residents from the Sociale Verzekeringsbank (SVB) under the Netherlands social security system are not to be taxed in the Netherlands but must be included in the recipient's assessable income for Australian taxation purposes under section 27H of the ITAA 1936.
3. The taxable amount of these pensions can generally be reduced by the pension's undeducted purchase price, or UPP. Broadly, UPP comprises non-employer contributions made to purchase a pension which were not allowable deductions as defined in section 6 of the ITAA 1936 and which, for contributions before 1 July 1983, did not give rise to a rebate of income tax. The UPP forms the basis of the 'deductible amount' (calculated under subsection 27H(2) of the ITAA

¹ Article 18 of Schedule 10 of the *International Tax Agreements Act 1953* (ITIA).

1936) which is excluded from the pension recipient's gross pension (under subsection 27H(1) of the ITAA 1936).

4. Under subsection 27H(3) of the ITAA 1936, the Commissioner has a discretion to substitute a deductible amount which is different from the amount calculated in accordance with the formula in subsection 27H(2) of the ITAA 1936. The Commissioner will exercise his discretion if he considers the deductible amount calculated in accordance with subsection 27H(2) of the ITAA 1936 is inappropriate having regard to the terms and conditions applying to the pension and to any other matters he considers to be relevant.

5. Under the Netherlands social security system, residents of the Netherlands are required to make compulsory social security contributions during their working lives, and former residents have the option of making voluntary social security contributions to maximise their pension entitlement. Netherlands social security pensions are subsequently paid by the SVB to those residents (or former residents) based on the number of years of contributions.

6. We accept that the old age pensions and the widows/widowers/orphans pensions paid by the SVB are contributory pensions and recipients of those pensions are entitled to have a deductible amount excluded from the pension received. However, the Ministry of Finance of the Netherlands has advised that complete data on actual contributions is often not available from the relevant Netherlands institutions. This means that it is often not possible to establish the full amount of actual contributions which form the 'purchase price' (as defined in subsection 27A(1) of the ITAA 1936) of such pensions.

7. We appreciate that it will be difficult for recipients of Netherlands social security pensions to calculate the exact amount of UPP because of the difficulties in obtaining all the necessary information. Therefore, having regard to the particulars of the Netherlands social security system and the general circumstances of Australian residents in receipt of these Netherlands social security pensions (including the average pension received and the period of time the former Netherlands residents have lived in Australia), the Commissioner will calculate the deductible amount as 25% of the gross pension paid (expressed in Australian currency).

Example

Astrid, aged 65, begins receiving a Netherlands old age pension on 1 July 1999. She has no documentary evidence of the compulsory contributions she made under the Netherlands social security system. Astrid is paid a gross amount of Netherlands old age pension of \$6,700 for the period from 1 July 1999 to 30 June 2000. Astrid's deductible amount is calculated as follows:

$$\begin{aligned} & 25\% \times \$6\,700 \\ = & \$1\,675 \end{aligned}$$

Astrid is entitled to a deductible amount (in respect of UPP) of \$1 675 for the Netherlands old age pension for the year ended 30 June 2000.

Commissioner of Taxation

11 October 2000

Previous draft:

Previously released in draft form as TD2000/D8;

Subject references:

- Australia/Netherlands Double Tax agreement
- deductible amount
- Netherlands old age pensions
- Netherlands widows, widowers and orphans pensions
- Netherlands social insurance system
- pensions
- undeducted purchase price

Legislative references:

- ITAA 1936 27A(1)
 - ITAA 1936 27H
 - ITAA 1936 27H(1)
 - ITAA 1936 27H(2)
 - ITAA 1936 27H(3)
 - ITIA 1953 Schedule 10 Art 18
-

ATO references:

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