



TD 92/178 - Income tax: is that part of the total cost incurred by Company A in acquiring shares in a third unrelated company from Company B under an underwriting agreement, and claimed as interest by Company A, deductible under subsection 51(1) of the Income Tax Assessment Act 1936 if: (a) company A treated the shares acquired as being on capital account; and (b) the underwriting agreement provided that the total acquisition cost was to include an amount expressed to be interest in relation to the period during which the agreement was current?

 This cover sheet is provided for information only. It does not form part of *TD 92/178 - Income tax: is that part of the total cost incurred by Company A in acquiring shares in a third unrelated company from Company B under an underwriting agreement, and claimed as interest by Company A, deductible under subsection 51(1) of the Income Tax Assessment Act 1936 if: (a) company A treated the shares acquired as being on capital account; and (b) the underwriting agreement provided that the total acquisition cost was to include an amount expressed to be interest in relation to the period during which the agreement was current?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *29 October 1992*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: is that part of the total cost incurred by Company A in acquiring shares in a third unrelated company from Company B under an underwriting agreement, and claimed as interest by Company A, deductible under subsection 51(1) of the *Income Tax Assessment Act 1936* if:

- (a) company A treated the shares acquired as being on capital account; and**
- (b) the underwriting agreement provided that the total acquisition cost was to include an amount expressed to be interest in relation to the period during which the agreement was current?**

1. No. The essential character of the outgoing under consideration is capital, or of a capital nature, as it formed part of a once only, non-recurrent, payment for the acquisition of shares by Company A which held them as non-trading, non-revenue, assets (*Sun Newspapers Ltd v FC of T* (1938) 61 CLR 337).

2. Also, the outgoing cannot be regarded as interest as there was no loan or debt in existence between Company A and Company B during the currency of the underwriting agreement. Interest can only be ascertained by reference to an obligation to pay a sum of principal moneys, and without that relationship an outgoing cannot be treated as interest (*Reference Re Saskatchewan Farm Security Act* [1947] SCR 394 at 411-412; *Federal Wharf Co. Ltd v DFC of T* (1930) 44 CLR 24 at 27-28).

Commissioner of Taxation
29/10/92

FOI INDEX DETAIL: Reference No. I1213530

Previously issued as Draft TD 92/D139

Subject Ref: deductibility of an amount paid under an underwriting agreement; interest expense

Legislative Ref: ITAA 51(1)

Case Ref: *Sun Newspapers Ltd v FC of T* (1938) 61CLR 337; Reference *Re Saskatchewan Farm Security Act* [1947] SCR 394; *Federal Wharf Co Ltd v DFC of T* (1930) 44 CLR 24

ATO Ref: NOR: J36/354/4

ISSN 1038 - 8982