

TD 94/3 - Income tax: where subsection 51AD(10) of the Income Tax Assessment Act 1936 applies, does it operate to reciprocally deny the derivation of relevant assessable income by a taxpayer?

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! This document has changed over time. This is a consolidated version of the ruling which was published on *13 January 1994*

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, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: where subsection 51AD(10) of the *Income Tax Assessment Act 1936* applies, does it operate to reciprocally deny the derivation of relevant assessable income by a taxpayer?

1. No. The deeming effect of subsection 51AD(10) is a 'statutory fiction' in the sense described by Griffith CJ in *Muller v. Dalgety & Co. Limited And Another* (1909) 9 CLR 693 at 696. That fiction exists only to the extent necessary to give effect to Parliament's intention. The Explanatory Memorandum to the Bill which proposed section 51AD said that subsection 51AD(10) '...will operate to disallow deductions attributable to the ownership of property to which section 51AD applies. It will do this by stipulating that such property is to be taken as not being used or held for use by the taxpayer for the purpose of producing assessable income or in carrying on a business for that purpose.'

2. Accordingly, any activities of the taxpayer which have the purpose of gaining or producing assessable income or constitute the carrying on of a business for that purpose would continue to be so characterised, notwithstanding the application of subsection 51AD(10), in determining the amount of assessable income derived by the taxpayer.

Commissioner of Taxation

13/1/94

FOI INDEX DETAIL: Reference No. I 1216883

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Related Determinations:

Related Rulings:

Subject Ref: leveraged arrangements

Legislative Ref: ITAA 51AD; ITAA 51AD(10)

Case Ref: *Muller v. Dalgety & Co. Limited and Another* (1909) 9 CLR 693

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