



TD 94/81 - Income tax: where an 'infrastructure facility' is constructed or acquired by an unincorporated joint venture which is not a general law partnership, what is the nature of each joint venture participant's interest in that property as to 'ownership', 'use' and 'effective control of the use' thereof for the purposes of paragraph 159GZZZZB(1)(a) of the Income Tax Assessment Act 1936 ?

 This cover sheet is provided for information only. It does not form part of *TD 94/81 - Income tax: where an 'infrastructure facility' is constructed or acquired by an unincorporated joint venture which is not a general law partnership, what is the nature of each joint venture participant's interest in that property as to 'ownership', 'use' and 'effective control of the use' thereof for the purposes of paragraph 159GZZZZB(1)(a) of the Income Tax Assessment Act 1936 ?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 6 October 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 an 'infrastructure facility' is constructed or acquired by an unincorporated joint venture which is not a general law partnership, what is the nature of each joint venture participant's interest in that property as to 'ownership', 'use' and 'effective control of the use' thereof for the purposes of paragraph 159GZZZZB(1)(a) of the *Income Tax Assessment Act 1936*?

1. A borrowing that is a 'direct infrastructure borrowing' as defined in section 159GZZZW will satisfy the 'basic borrower' requirements of section 159GZZZZ and also the 'facility use' requirements of section 159GZZZZB. This Determination is not concerned with the 'basic borrower' requirements of section 159GZZZZ. It simply focuses upon the form of paragraph 159GZZZZB(1)(a), i.e., '...that at the time of the borrowing, the borrower intends that it will own, use and effectively control the use of the facilities on which the [borrowed] money will be spent (other than by leasing them) principally for assessable income purposes...'

2. If the legal ownership of an infrastructure facility (including a related facility) is held jointly by the participants in an unincorporated joint venture which is not a general law partnership, that property would be regarded as being owned by the participants as tenants in common. Accordingly, the ownership requirement of paragraph 159GZZZZB(1)(a) would be satisfied in respect of each participant's (fractional though undivided) interest in the property.

3. The 'use' and 'effective control of use' tests would consequently address each participant's interest in the relevant property. Those tests cause no difficulty where, as the Explanatory Memorandum instances, the participants '...either operate the facility on a day-to-day basis through their employees or agents, or have such an immediate supervisory role that enables them to direct others in that day-to-day operation.' However, it is a commercial reality that a feature of many unincorporated joint ventures is the presence of an 'operator', be it one of the participants or a third party, which has day-to-day responsibility on behalf of the participants for the management of the joint venture activity. The operator would commonly be a general law agent of each participant severally. Where there is in fact such an agency relationship the presence of an operator would not of itself deny that each participant would 'use' and 'effectively control the use of' its particular interest in the infrastructure facility.

Commissioner of Taxation

6/10/94

FOI INDEX DETAIL: Reference No. I 1217851

Previously issued as Draft TD 94/D55

Subject Ref: infrastructure borrowings; public infrastructure projects

Legislative Ref: ITAA 159GZZZZ; ITAA 159GZZZZB; ITAA 159GZZZZB(1)(a); ITAA 159GZZZW

ATO Ref: Public Infrastructure Unit DTD/17; 94/6862-5

ISSN 1038 - 8982