



TD 94/85W - Income tax: is a taxpayer entitled to a deduction under subsection 59(1) or any other section of the Income Tax Assessment Act 1936 when an item of plant is sold by an agent of the taxpayer and the proceeds of sale are misappropriated by the agent?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 3 September 2008



Notice of Withdrawal

Taxation Determination

Income tax: is a taxpayer entitled to a deduction under subsection 59(1) or any other section of the *Income Tax Assessment Act 1936* when an item of plant is sold by an agent of the taxpayer and the proceeds of sale are misappropriated by the agent?

Taxation Determination TD 94/85 is withdrawn with effect from today.

1. TD 94/85 explained that a deduction is not allowable under former subsection 59(1) of the *Income Tax Assessment Act 1936* (ITAA 1936) for an amount misappropriated by the taxpayer's agent on the sale of an item of plant. Neither is a deduction allowable under former sections 63 or 71 of the ITAA 1936 as a bad debt or loss.
2. Sections 25-47, 104-240 and 104-245 of the *Income Tax Assessment Act 1997* deal with amounts misappropriated by a taxpayer's employee or agent in the 2007-08 income year and later income years when the amounts misappropriated relate to a balancing adjustment event occurring for the taxpayer's depreciating asset. Those sections allow a deduction or the reduction of the termination value of a depreciating asset for certain amounts misappropriated by the taxpayer's employee or agent.
3. Accordingly, as this Determination is no longer current, it is withdrawn.

Commissioner of Taxation

3 September 2008

ATO references

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ATOlaw topic: Income Tax ~~ Deductions ~~ theft and misappropriation of funds
Income Tax ~~ Capital allowances ~~ capital works deduction – deduction and
balancing calculations