


***TD 94/D38 - Income tax: may the material contained in the 1985, or earlier, ATO Assessing Handbooks be relied on as correctly stating current ATO interpretation, policy or practice in respect of the Income Tax Assessment Act 1936?***

 This cover sheet is provided for information only. It does not form part of *TD 94/D38 - Income tax: may the material contained in the 1985, or earlier, ATO Assessing Handbooks be relied on as correctly stating current ATO interpretation, policy or practice in respect of the Income Tax Assessment Act 1936?*

This document has been finalised by TD 94/45.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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### **Income tax: may the material contained in the 1985, or earlier, ATO Assessing Handbooks be relied on as correctly stating current ATO interpretation, policy or practice in respect of the *Income Tax Assessment Act 1936*?**

1. No. The contents of the Assessing Handbooks cannot be relied on as evidence of the ATO's position. Taxpayers who wish to know the current ATO position should refer to ATO documents such as Taxation Rulings and Determinations or seek a binding private ruling.
2. The Assessing Handbooks were previously used by the Taxation Office to give assessors a guide to both the procedural and technical aspects of assessing income tax returns. They were intended to represent the income tax laws as they existed and were interpreted at that time. Due to the move to self assessment, these Handbooks have not been updated since 1985. These handbooks have been outdated as the income tax laws have changed greatly since they were compiled. Consequently, we do not regard the contents of the Assessing Handbooks as setting out the ATO's view and practices.
3. We do not consider the Assessing Handbooks to be 'a previous ATO publication' for the purposes of paragraph 15(c) of taxation Ruling TR 92/20 (date of effect guidelines for Taxation Rulings and Determinations). Paragraph 15(c) of TR 92/20 cites information booklets and Tax Pack as examples of relevant publications. These examples reinforce the conclusion that an 'ATO publication' for the purposes of paragraph 15(c) is an ATO document prepared specifically to inform members of the public of their taxation rights and obligations. The expression does not extend to an in-house document that was prepared for use by ATO officers in making decisions and which entered the public domain as a result of the ATO's obligations under the *Freedom of Information Act 1982*.
4. It is true that, at least for many years, Taxation Rulings were also essentially in-house documents used by ATO officers in making decisions and which became public as a result of Freedom of Information Act obligations. However, Taxation Rulings are mentioned in paragraph 15 of TR 92/20 (see subparagraph (a)), whereas Assessing Handbooks are not.
5. Furthermore, we do not consider the guidelines referred to in the Assessing Handbooks to be instances of 'consistent communication to a wide range of taxpayers' as described in paragraph 16 of TR 92/20.

6. Consequently, a Ruling or Determination that is less favourable to taxpayers than the position adopted in an Assessing Handbook need not, in terms of the date of effect guidelines in TR 92/20, have only a future application.

**Commissioner of Taxation**

7/4/94

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: TR 92/20

Subject Ref: assessing handbooks; date of effect; taxation determinations; taxation rulings.

Case Ref:

ATO Ref: NAT 92/6830-8

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