



TD 2004/26 - Income tax: does an arrangement under which an employee and his employer lease and leaseback the employee's private residence and some of the employee's remuneration is replaced with income from property entitle the employee to a deduction for expenditure in relation to the residence under section 8-1 of the Income Tax Assessment Act 1997 ?

 This cover sheet is provided for information only. It does not form part of *TD 2004/26 - Income tax: does an arrangement under which an employee and his employer lease and leaseback the employee's private residence and some of the employee's remuneration is replaced with income from property entitle the employee to a deduction for expenditure in relation to the residence under section 8-1 of the Income Tax Assessment Act 1997 ?*

 This Ruling has been reviewed by the ATO and does not require any updates as at 31 March 2017.



Taxation Determination

Income tax: Does an arrangement under which an employee and his employer lease and leaseback the employee's private residence and some of the employee's remuneration is replaced with income from property entitle the employee to a deduction for expenditure in relation to the residence under section 8-1 of the *Income Tax Assessment Act 1997*?



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Preamble

*The number, subject heading, date of effect and paragraphs 1 to paragraphs 7 of this document are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner.*

1. No.
2. In order to be deductible under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997), a loss or outgoing must be incurred in gaining or producing your assessable income or in carrying on a business for that purpose. It cannot be private, domestic or capital in nature and cannot be incurred in relation to gaining or producing exempt income.
3. Under the type of arrangement described above, an employee ('A') leases his private residence to his employer ('B') for a market rent. B immediately grants a sublease of the residence back to A. A agrees to sacrifice an amount of salary equal to the market rent in return for a housing benefit from B, being the right to occupy or use the residence under the sublease. However, A's income from B is not reduced because it is made up by the market rent A receives from B under the head lease.
4. In our view, the essential character of all of the expenditure incurred by A in relation to the property is determined by the fact that it is paid to secure and maintain A's private residence, his occupation of which continues undisturbed by the arrangement. In these circumstances, the expenditure constitutes outgoings of a private or domestic character and is not deductible to A.
5. In the alternative, and to the extent (if any) that expenses relating to the property are deductible to A, the artificial and contrived nature of this arrangement (a scheme for

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the purposes of Part IVA of the *Income Tax Assessment Act 1936* (ITAA 1936)) will require an examination of the dominant purpose of the parties involved for entering into and carrying out the scheme.

6. In our view, the manner in which the scheme is entered into and carried out, the contrast between its form and substance and the fact that A receives the same amount of income from B strongly suggest that Part IVA of the ITAA 1936 will be applicable.

Date of effect

7. This Determination applies to years commencing both before and after its date of issue. However, it does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Commissioner of Taxation

7 July 2004

Previous draft:

TD 2003/D7

Related Rulings/Determinations:

TR 92/20

Subject references:

- deductions
- employee lease arrangements
- lease
- lease and lease back
- property expenses

Legislative references:

- TAA 1953 Part IVAAA
- ITAA 1936 Part IVA
- ITAA 1936 8-1

Other references:

- Taxpayer Alert TA 2002/9

ATO references

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