

***TR 95/25A - Addendum - Income tax: deductions for interest under subsection 51(1) of the Income Tax Assessment Act 1936 following FC of T v. Roberts; FC of T v. Smith***

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## Addendum

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### **Income tax: deductions for interest under subsection 51(1) of the *Income Tax Assessment Act 1936* following *FC of T v. Roberts*; *FC of T v. Smith***

*The Tax Law Improvement Project is restructuring, renumbering and rewriting the income tax law in plain language. The Parliament is amending the income tax law progressively to reflect these aims. As new laws come into effect, Taxation Rulings about old laws are being brought into line with them.*

This Addendum amends Taxation Ruling TR 95/25, in relation to the 1997-98 or a later income year, as follows:

#### **1. Generally**

Omit 'subsection 51(1)' (wherever occurring except in paragraph 4, paragraph 22, paragraph 27); substitute 'section 8-1'.

#### **2. Title**

Omit 'subsection 51(1) of the *Income Tax Assessment Act 1936*'; substitute 'section 8-1 of the *Income Tax Assessment Act 1997*'.

#### **3. Paragraph 1**

Omit 'section 6(1) partnerships'; substitute 'partnership for tax purposes only'.

#### **4. Paragraph 2**

(a) Omit 'section 51(1) of the *Income Tax Assessment Act 1936* ('the Act'); substitute 'section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) (formerly subsection 51(1) of the *Income Tax Assessment Act 1936*)';

(b) Omit 'subsection'; substitute 'section'.

#### **5. Subparagraph 2(b)**

Insert 'necessarily' before the word 'incurred'.

## 6. Subtitle before paragraph 8

Omit 'Section 6(1) partnerships which are not general law partnerships'; substitute 'Partnerships for tax purpose only'.

## 7. Paragraph 9

Omit 'subsection 6(1) partnership'; substitute 'partnership for tax purposes'.

## 8. Paragraph 10

Omit 'subsection 6(1) tax law partnership'; substitute 'partnership for tax purposes only'.

## 9. Paragraph 15

- (a) After words 'a declared dividend'(first occurring) insert '( including a deemed unfrankable and unrebtable dividend paid from a "tainted share capital account" after 1 July 1998)';
- (b) Omit 'declared' (second occurring).

## 10. Paragraph 17

Omit 'section 80G or section 160ZP of the Act'; substitute 'Subdivisions 170-A and 170-B of the ITAA 1997'.

## 11. Paragraph 27

After words '(1991) 22 ATR 168 at 177' insert '*Hayden v. FC of T* 96 ATC 4797 at 4801; (1996) 33 ATR 352 at 356'.

## 12. After paragraph 33

Insert:

33A. In *Hayden* the Federal Court considered whether interest incurred by an Executor on borrowings that were used to discharge an obligation of the estate. The fact that the borrowing of funds permitted income producing assets to remain as part of the estate so that the income stream to the estate was not diminished, did not bring the interest of the borrowings within a loss or outgoing under subsection 51(1).

## 13. Paragraph 41

Omit 'AAS 10'; substitute 'AASB 1010'.

## 14. Paragraph 43

Omit 'subsection 6(1) of the Act'; substitute 'subsection 995-1(1) of the ITAA 1997'.

**15. After paragraph 54**

Insert:

**Cross reference of provisions**

55. Section 8-1, subdivisions 170-A and 170-B and the definition of 'partnership' in subsection 995-1(1) of the *Income Tax Assessment Act 1997*, to which this Ruling refers, express the same ideas as subsections 51(1), sections 80G and 160ZP and the definition of 'partnership' in subsection 6(1), respectively, of the *Income Tax Assessment Act 1936*.

**16. Case References:**

Insert:

*Hayden v. FC of T* 96 ATC 4797; (1996) 33 ATR 352.

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**Commissioner of Taxation**26 May 1999

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