

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.

Draft Taxation Determination

Income tax: property development: who is a 'qualified person' to make an estimate of the actual cost of construction of a building for the purposes of Division 10D of the *Income Tax Assessment Act 1936*?

1. A deduction is allowable under section 124ZH in respect of qualifying capital expenditure incurred on the construction of, or an extension, alteration or improvement to certain income-producing buildings. Section 124ZG defines qualifying expenditure to be the actual capital expenditure incurred in constructing, extending, altering or improving an eligible building.
2. In circumstances where a taxpayer is genuinely unable to precisely determine the actual cost of the building, it is accepted that an estimate of the cost of construction by a quantity surveyor or 'other independent qualified person' may be used: see paragraph 19 of Taxation Ruling IT 2640. However, some doubt has arisen as to who will be accepted as a 'qualified person'.
3. It is considered that a qualified person is someone who has expertise in the calculation of the original cost of construction and who would be likely to be accepted by a court or tribunal as an expert witness on the issue of calculating the cost of construction. That expertise may have been acquired through a course of study or relevant experience in providing building cost estimates over a significant period of time.
4. The attainment of relevant professional qualifications or recognition by an appropriate professional association or organisation would be indicative of expertise in this field.
5. Unless they are otherwise qualified, valuers, real estate agents, accountants and solicitors generally have neither the relevant qualifications nor experience to make such an estimate.
6. Appropriately qualified people might include:
 - a clerk of works, such as a project organiser for major building projects;
 - a supervising architect who approves payments at each stage in major projects and who may approve individual payments to subcontractors in smaller projects;
 - a builder who is experienced in estimating construction costs of similar building projects; or
 - another person who is suitably qualified or has experience in providing estimates or costings in similar building projects.

7. The onus of proving that a person has the required expertise rests with the taxpayer. That will be an issue of fact in each case.

8. The use of published building cost guides to estimate the actual cost of construction will not be accepted, unless they are used merely as a guide by a suitably qualified person. The building cost guides typically provide a cost per square metre of a range of building projects. They are based on industry averages and will not be sufficiently specific to the particular building being valued.

9. The building cost guides also include a reasonable profit margin for the builder. However, the builder's profit margin does not form part of the cost of construction unless the original construction was commissioned from a builder, whose charges for the work would have included such a profit. Where the original construction was carried out directly by the then owner, or by that owner using trade subcontractors and perhaps an architect, no such builder's profit was incurred as part of the cost of construction.

Commissioner of Taxation

16/6/94

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