

Taxation Determination TD2003/10

The next three pages reproduce Taxation Determination TD2003/10, issued 30 April 2003.

This income tax determination deals with the question: Is expenditure incurred by a head company in obtaining valuations in respect of the formation of a consolidated group or entities joining a consolidated group an allowable deduction?



Taxation Determination

Income tax: is expenditure incurred by a head company in obtaining valuations in respect of the formation of a consolidated group or entities joining a consolidated group an allowable deduction under section 25-5 of the *Income Tax Assessment Act 1997*?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 7 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

1. Yes. Expenditure incurred by a head company in obtaining market valuations that are necessary to comply with the requirements of the income tax laws for forming a consolidated group or for entities to join an existing consolidated group is deductible because it is a tax-related expense for the purposes of section 25-5 of the *Income Tax Assessment Act 1997* ('the Act'). A tax-related expense for the purposes of this Taxation Determination refers to expenditure incurred by a head company to the extent that it is for (a) managing its tax affairs; or (b) complying with an obligation imposed on it by a Commonwealth law, insofar as that obligation relates to the tax affairs of an entity: see paragraph 25-5(1)(a) and paragraph 25-5(1)(b) of the Act.

2. Market valuations are required under a number of provisions within the consolidation legislation. Where expenditure incurred on such a valuation relates solely to complying with a requirement under the consolidation legislation, it is wholly deductible under section 25-5.

3. The expression 'You can deduct expenditure you incur to the extent that it is for...' in subsection 25-5(1) requires an apportionment of the valuation expenses between deductible amounts of tax-related expenses and amounts that are not deductible under section 25-5 in circumstances where the valuation is not obtained solely for the purpose of complying with the legislative requirements for forming or joining a consolidated group. The valuation could also be undertaken for non-tax-related purposes such as to provide directors of companies with an independent valuation to assist their decision-making on the acquisition or disposal of assets, to provide information to potential or existing lenders, or to provide a basis for the restructure of a corporate group prior to the formation of a consolidated group. To the extent that the valuation is undertaken for these non tax-related

purposes, the expenditure incurred is not an allowable deduction under section 25-5. However, the expenditure may satisfy the requirements for deductibility under another provision of the Act.

4. In these circumstances, only an appropriate portion of the valuation expenses will be an allowable deduction under section 25-5. It is only this portion that can be said to have been incurred in respect of a tax-related matter. What is the appropriate portion will depend on the facts of each case. For example, with a valuation undertaken equally for the purposes of an entity joining the consolidated group and for valuing its assets for insurance purposes, only half of the total cost of the valuation is an allowable deduction under section 25-5. It would then be necessary to consider whether the remainder of the cost is deductible under section 8-1.

5. If the valuation is obtained solely for a tax-related purpose such as the formation of a consolidated group, the fact that it may subsequently be used for obtaining insurance, an accounting revaluation, or any other purpose would not detract from its full deductibility under section 25-5. However, if the valuation is obtained for some other purpose, the fact that it is subsequently used in relation to the formation or joining of a consolidated group would not entitle the head company to a deduction under section 25-5.

6. Under section 25-5 of the Act, a head company can deduct expenditure incurred in managing its income tax affairs or complying with an obligation imposed on it by a Commonwealth law, insofar as that obligation relates to the income tax affairs of an entity. Where a consolidated group is formed, the group is treated as a single entity for income tax purposes. Subsidiary members of the group are treated as parts of the head company rather than as separate income tax identities (section 700-1). A deduction is allowable under section 25-5 for expenditure incurred by the head company to obtain valuations for consolidation purposes after the formation of the consolidated group. A deduction is allowable also under section 25-5 for expenditure incurred by the head company to obtain valuations for consolidation purposes before the joining time or formation of the consolidated group, even if the consolidation does not go ahead. A head company of a consolidated or consolidatable group that is an STS taxpayer can deduct tax-related valuation expenses only when they are paid (paragraph 328-105(1)(b) of the Act).

7. Capital expenditure is expressly excluded from being an allowable deduction under section 25-5. However, expenditure for this purpose is not necessarily characterised as being 'capital' merely because it relates to matters of a capital nature. Expenditure incurred by a head company in obtaining market valuations in respect of the formation of a consolidated group or entities joining a consolidated group is not capital in nature.

Date of effect

8. This Determination applies to years commencing both before and after its date of issue. However, this Determination 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

30 April 2003

Previous draft:

Previously released as TD 2002/D12

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/16; TD 2003/11

Subject references:

- tax-related expense

Legislative references:

- ITAA 1997 8-1
- ITAA 1997 25-5
- ITAA 1997 25-5(1)(a)
- ITAA 1997 25-5(1)(b)
- ITAA 1997 328-105(1)(b)
- ITAA 1997 700-1

ATO references

NO: 2002/017668

ISSN: 1038-8982