

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: has an expense been 'incurred' for the purchase of imported trading stock which is in transit by sea and for which the bills of lading or non-negotiable waybills and finance documents relating to liability for payment have not yet been accepted?

1. At the end of an income year, the question often arises as to whether a taxpayer has 'incurred' an expense for the purchase of the stock in transit for the purposes of subsections 51(1) or 51(2A) of the *Income Tax Assessment Act 1936*. Generally, it is a pre-condition of deductibility under subsection 51(1) that there be a presently existing legal liability or obligation which is due but not necessarily payable (*Nilsen Development Laboratories Pty Ltd v FC of T* 81 ATC 4031 at 4034-35, 11 ATR 505 at 509; *FC of T v James Flood Pty Ltd* (1953) 88 CLR 492; *Coles Myer Finance Ltd v FC of T* 93 ATC 4212, 4220, 25 ATR 95, 103). Whether such a liability exists is a question which can only be determined by reference to the particular facts of the case and especially to the terms of the contract (see paragraph 6 of Taxation Ruling IT 2625).

2. There is no hard and fast rule for when there is a presently existing liability in the purchase of trading stock in transit. It is important to consider the circumstances of each case. However, frequently there is no presently existing liability until the purchaser either:

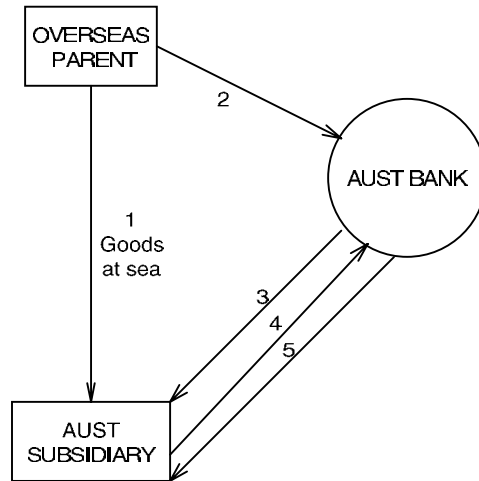
- accepts the shipping documents (eg bill of lading); or
- accepts or endorses the financial documents relating to the liability for payment of the goods, where the acceptance or endorsement is not conditional upon any further acts by the supplier

In such cases, the expense is not 'incurred' for the purposes of subsection 51(1) until one of those two events occurs.

3. Subsection 51(2A) is relevant to the deductibility of expenditure incurred after 19 December 1991 in acquiring trading stock. Under subsection 51(2A), it is necessary (but not sufficient) that the taxpayer 'incur' the expenditure before a deduction is allowable. Expenditure that would otherwise be deductible under subsection 51(1) when 'incurred' is not deductible until the year of income in which the taxpayer has taken the trading stock into account as stock on hand, or the year in which the taxpayer includes an amount in assessable income in connection with the disposal of the stock, if earlier. The appropriate test for whether stock is on hand is not whether it is physically on hand, but rather whether the taxpayer has the power to dispose of the stock (*All States Frozen Foods v F.C of T* 90 ATC 4175; (1990) 20 ATR 1874, see also Taxation Ruling IT 2670). Thus, trading stock in transit from a supplier may still be 'on hand' in the relevant sense.

4. This Determination applies equally to dealings with related or unrelated parties.

Example:



Facts:

1. Goods are loaded and an invoice is sent by facsimile from Overseas Parent to Australian Subsidiary on 15/6/xx.
2. The shipping documents and bill of exchange are forwarded to Austbank on 25/6/xx.
3. Austbank forwards the bill of exchange to Australian Subsidiary on 28/6/xx.
4. Australian Subsidiary endorses the bill of exchange and returns it to Austbank on 2/7/xx.
5. Austbank releases the shipping documents to Australian Subsidiary on 2/7/xx.

As Australian Subsidiary had not 'completely subjected itself' to the purchase of the goods until it endorsed the bill of exchange on 2/7/xx the expenditure has not been 'incurred' in the year ended 30/6/xx.

Commissioner of Taxation

8/7/93

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Related Rulings: IT 2625 IT 2670

Subject Ref: Allowable deductions, bills of lading, incurred, stock in transit.

Legislative Ref: ITAA 51(1), 51(2A)

Case Ref: *Nilsen Development Laboratories Pty Ltd v FC of T* 81 ATC 4031; (1981) 11 ATR 505, *All States Frozen Foods v FC of T* 90ATC 4175; (1990), *Coles Myer Finance Ltd v FC of T* 93 ATC 4212, 25 ATR 95

20 ATR 1874.

ATO Ref: CWD Case # 54

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