
Taxation Determination

Income tax: is expenditure incurred by an entity in obtaining valuations for the purposes of either entering into a consolidated group as a subsidiary member, or working out the future income tax liability of a consolidated group of which it would be a subsidiary member an allowable deduction to that entity under section 25-5 of the *Income Tax Assessment Act 1997*?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 8 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 an entity to obtain market valuations for the purposes of either facilitating its entry into a consolidated group as a subsidiary member or working out the future income tax liability of a consolidated group of which it would be a subsidiary member is an allowable deduction because it is a tax-related expense for the purposes of section 25-5 of the *Income Tax Assessment Act 1997* ('the Act').
2. Under paragraph 25-5(1)(a) of the Act an entity can deduct expenditure incurred in managing its tax affairs. The expenditure may relate to a past, present or future year of income of the entity.
3. The guide to Part 3-90 of Division 700 provides that following a choice to consolidate, subsidiary members are treated as part of the head company of the group rather than as separate income tax identities. The head company inherits the income tax history of subsidiary members when they become members of the group. There are rules that set the cost for income tax purposes of assets of entities when they become subsidiary members of a consolidated group. These rules require values to be ascertained of all assets to facilitate their application. When read together, sections 701-1, 703-5, 703-10, 703-15 and 721-15 make it clear that subsidiary members continue to have tax affairs as part of the consolidated group's tax affairs, although they cease to be taxpayers in their own right.

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4. Where a subsidiary member of a consolidatable group incurs expenditure to obtain valuations for consolidation purposes prior to entering into a consolidated group, those expenses are incurred in contemplation that the subsidiary is likely to become part of the consolidated group. That expenditure, therefore, is incurred in relation to the subsidiary's tax affairs and is an allowable deduction under paragraph 25-5(1)(a) of the Act.

5. A deduction is allowable also under paragraph 25-5(1)(a) where an entity incurs expenditure to obtain valuations for the purpose of entering into a consolidated group as a subsidiary member, even though consolidation does not go ahead.

6. Subsection 25-5(1) requires an apportionment of 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 consolidation purposes. Valuations 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 a valuation is undertaken for these other purposes, the expenditure is not an allowable deduction under section 25-5. However, the expenditure may satisfy the requirements for deductibility under another provision of the Act.

7. Capital expenditure is expressly excluded from being an allowable deduction under section 25-5. In this instance, expenditure incurred by a subsidiary in obtaining market valuations in respect of the formation of or joining a consolidated group is not considered to be of a capital nature.

8. A deduction is not allowable under section 25-5 for valuation expenses incurred by a subsidiary entity on behalf of other members of the consolidatable group prior to consolidation. This is because paragraph 25-5(1)(a) requires that the expenditure incurred must relate to the tax affairs of the entity that incurred the expenditure.

Date of effect

9. 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 Taxation30 April 2003

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/16; TD 2003/10

Subject references:

- tax-related expenses

Legislative references:

- ITAA 1997 25-5
- ITAA 1997 25-5(1)(a)
- ITAA 1997 Div 700
- ITAA 1997 700-1
- ITAA 1997 701-1
- ITAA 1997 703-5
- ITAA 1997 703-10
- ITAA 1997 703-15
- ITAA 1997 721-15

ATO references

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