


***TD 93/D120 - Income tax: if a lessee incurs legal expenses defending a lessor's attempts to terminate the lease, are these legal expenses an allowable deduction under subsection 51(1) of the Income Tax Assessment Act 1936 ?***

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This document has been finalised by TD 93/141.

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.

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## Draft Taxation Determination

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**Income tax: if a lessee incurs legal expenses defending a lessor's attempts to terminate the lease, are these legal expenses an allowable deduction under subsection 51(1) of the *Income Tax Assessment Act 1936*?**

1. No. The legal expenses are of a capital nature and are not deductible under subsection 51(1).
2. They are not incurred by the lessee in the course of gaining or producing assessable income or carrying on a business for that purpose, but are incurred for the purpose of securing the lessee's right to possession of the asset that is being leased.
3. However, the first \$50 of the legal expenses will be allowable under section 64A if they fall within the definition of legal expenses in that section.

*Example:*

*Z leases business premises from ABC P/L. ABC P/L serves notice to terminate the lease. Z incurs legal costs of \$1250 engaging a solicitor to defend the action. The \$1250 is not allowable under subsection 51(1) as these expenses are of a capital nature. However, the first \$50 is allowable as a deduction under section 64A.*

**Commissioner of Taxation**

20/5/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: leases; legal expenses; termination of lease

Legislative Ref: ITAA 51(1); ITAA 64A

Case Ref:

ATO Ref: NEWTD35

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ISSN 1038 - 8982