

IT 149 - Legal expenses incurred for fines and/or breaches of the law in the course of carrying on a business



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TAXATION RULING NO. IT 149

LEGAL EXPENSES INCURRED FOR FINES AND/OR BREACHES OF
THE LAW IN THE COURSE OF CARRYING ON A BUSINESS

F.O.I. EMBARGO: May be released

REF

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
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PREAMBLE These guidelines have issued as a result of several decisions concerning the deductibility of legal expenses, to assist in the treatment of such expenses.

2. As a result of a number of decisions which are conveniently set out in paragraphs 512 and 513 of Challoner & Greenwood's "Income Tax Law and Practice", it has become a fairly well established principle that deductions are not allowed for fines incurred for breaches of the law committed in the course of carrying on a business. In normal circumstances, the legal expenses incurred by a taxpayer in defending himself or his employees from prosecutions of this nature would also fail to qualify for deduction. The principle no doubt has its justification in an assumption that if a taxpayer chooses to operate in breach of the law, the expenditure is not incurred in the furtherance of his business but rather in connection with the imposition of penalties for unlawful acts.

3. Notwithstanding these principles there is a marginal type of case in which a taxpayer who is carrying on a business in good faith and in a reputable manner necessarily exposes himself to some risk of occasional prosecution because, in the day to day conduct of his business, he must operate through employees and there is always a risk that more or less inadvertently he may fall into a breach of the law.

4. This situation arose in a case where a dairy company of good repute was prosecuted for a minor breach of cleanliness involving the work of one employee. There was no indication that the company had adopted a practice of ignoring its responsibilities under the law or taking a calculated risk with prosecutions. It rather appeared that the company, quite by accident, had been held responsible for the casual negligence of one person. This was recognised by the Court is not imposing a pecuniary penalty for the offence.

RULING

5. In these circumstances the decision was taken that it would be consistent with the decision of the High Court in *Herald & Weekly Times Ltd v FCT* (1932) 48 CLR 113 to regard the expenditure as normal incident to which the taxpayer had been exposed in the day to day conduct of its business and which satisfied the tests for deductibility under section 51.

6. The decision may be followed in other cases of a similar nature as, for example, where a reputable restaurant proprietor finds it necessary to incur legal expenses in connection with action taken against him for an accidental breach of the Government regulations relating to hygiene and cleanliness. It will not, however, extend to expenditure incurred in meeting fines imposed on the taxpayer or his employees or to legal expenses incurred by taxpayers such as transport operators who, as calculated risk, persistently take liberties with the law and incur fines regularly in the interests of the efficient operation of their business. There are a number of such cases which are waiting decision by the Board of Review and further rulings will be given in the light of the outcome in these cases.

COMMISSIONER OF TAXATION