



TD 94/94 - Income tax: can subsection 51(2A) of the Income Tax Assessment Act 1936 operate to deny a tax deduction, available to a motor vehicle dealer, for second schedule charges incurred when acquiring new vehicle trading stock?

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 This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

 This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

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: can subsection 51(2A) of the *Income Tax Assessment Act 1936* operate to deny a tax deduction, available to a motor vehicle dealer, for second schedule charges incurred when acquiring new vehicle trading stock?

1. Yes. Subsection 51(2A) of the *Income Tax Assessment Act 1936* (the Act) has the effect of denying a deduction for expenditure incurred after 19 December 1991 in connection with the acquisition of stock until:

- (a) that stock has actually become trading stock on hand of the taxpayer; or
- (b) an amount has been included in assessable income as a result of the disposal of that stock by the taxpayer.

2. Second schedule charges incurred by a motor vehicle dealer, upon the acquisition of a new vehicle from the manufacturer/importer, are considered to be a component of cost price for the purposes of calculating the value of the item in terms of subsection 31(1) of the Act (see Taxation Determination TD 94/93).

3. Numerous motor vehicle dealerships involved in the distribution of new vehicles are structured on composite business lines, usually with separate wholesale and retail companies. This structure is illustrated in the case of *FC of T v. Suttons Motors (Chullora) Wholesale Pty Ltd* 85 ATC 4398; (1985) 16 ATR 567.

4. Some dealers, when the purchase of a new vehicle is completed, have an arrangement with the manufacturer/importer for the invoicing of the first schedule charges to the wholesale company. Around the same time an invoice for the second schedule charges is forwarded to the retail company. In the event of a retail sale of a new motor vehicle the vehicle is disposed of by the wholesale company to the retail company and then by the retail company to the purchaser.

5. In these circumstances, subsection 51(2A) may apply to deny a deduction to a dealer's retail company for second schedule charges incurred subsequent to 19 December 1991. A deduction is only allowable once the conditions explicit in subsection 51(2A) have been satisfied.

Example:

The Larger-Than-Life Motors Group consists of a wholesale company and a retail company. The group markets the Sunburn range of new motor vehicles.

Subsequent to 19 December 1991, the Group incurs expenditure on a new Sunburn vehicle. The vehicle is delivered and the wholesale company receives an invoice for the first schedule charges. Around the same time, the retail company receives an invoice for the second schedule charges, i.e. the additional charges levied by the manufacturer for the delivered vehicle.

This new Sunburn vehicle is still on hand at the end of the financial year and is accounted for as trading stock on hand of the wholesale company.

The wholesale company should bring the vehicle to account at the end of the year as trading stock on hand. The first schedule charges would represent a component of cost price for the purposes of calculating the value of the vehicle in terms of subsection 31(1).

Due to the operation of subsection 51(2A), the retail company would be denied a deduction for the second schedule charges in that year.

Commissioner of Taxation15/12/94

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Related Determinations: TD 94/93

Related Rulings: TR 93/9

Subject Ref: trading stock valuation method; cost price of motor vehicles; cost price method

Legislative Ref: ITAA 31(1); ITAA 51(2A)

Case Ref: *FC of T v. Suttons Motors (Chullora) Wholesale Pty Ltd* 85 ATC 4398; (1985) 16 ATR 567ATO Ref: BAN TD 41; NAT 94/8835-9

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