TD 2014/15EC - Compendium

Ruling Compendium – TD 2014/15

This is a compendium of responses to the issues raised by external parties to Draft Taxation Determination 2013/D9 *Income tax: when will Design Expenditure incurred by an R&D entity be included in the cost of a tangible depreciating asset within paragraph 355 225(1)(b) of the Income Tax Assessment Act 1997 (and therefore not able to be deducted under section 355 205)?*

This compendium of comments has been edited to maintain the anonymity of entities that commented on the Draft Determination.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	Draft Taxation Determination TD 2013/D9 should consider the second element of cost.	No real uncertainty was identified with determining the second element of cost in the circumstances covered by the Determination. The Determination has been amended to clarify it deals only with the first element of cost.
2	Draft Taxation Determination TD 2013/D9 should clarify that expenditure related to what is termed 'hot' or 'wet' trialling (being expenditure incurred after the asset is held and installed ready for use for the purposes of Division 40) should not be capitalised.	We have considered the comment and do not consider that any changes are required to the Determination.
3	Draft Taxation Determination TD 2013/D9 example should be changed so that preliminary design and option exploring expenditure related to the ultimately selected solution should be treated in the same manner as the preliminary design and option exploring expenditure in Year 1 and 2.	We have considered the comment have revised the Example. We consider that it adequately describes the treatment of each of the respective items of expenditure referred to.

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4	Draft Taxation Determination TD 2013/D9 should include further examples to illustrate the point in time in which considerable uncertainty ceases regarding the final shape, features and performance of the asset.	We have considered the comment but no longer refer to the final shape, features and performance of the asset in the Determination. In terms of including a further example, we consider that this would largely duplicate the existing detailed Example, albeit in relation to a different final asset. The existing Example deals with a range of different types of Design Expenditure and describes for each whether, and, if so, why, they are included in the first element of cost.
5	Draft Taxation Determination TD 2013/D9 introduces practical difficulties in terms of determining retrospectively, a number of years later, whether an expense was properly or not properly claimed as a notional deduction under section 355-205 of the *Income Tax Assessment Act 1997*.	We have considered the comment and acknowledge that practical difficulties can arise in determining retrospectively, whether an expense was properly or not properly claimed as a notional deduction under section 355-205 of the *Income Tax Assessment Act 1997*. We have expanded the example to deal with some of these practical implications (see in particular paragraph 25).