



TD 92/D189 (Withdrawn) - Income tax: are legal expenses deductible by a taxpayer where they are incurred in defending actions brought for illegally conducting conveyancing in the course of carrying on a real estate business?

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 This document has been Withdrawn.

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.

Draft Taxation Determination

Income tax: are legal expenses deductible by a taxpayer where they are incurred in defending actions brought for illegally conducting conveyancing in the course of carrying on a real estate business?

1. Yes. The second limb of subsection 51(1) of the *Income Tax Assessment Act 1936* allows a deduction for expenditure that is necessarily incurred in carrying on a business for the purpose of gaining assessable income.
2. In *Magna Alloys & Research Pty Ltd v FC of T*, 80 ATC 4542, legal costs incurred in defending a taxpayer's business methods were deductible, even though the nature of the activity was illegal.

Note: In this Determination "Legal Expenses" have the same meaning as that in subsection 64A(1).

Example:

Abel carries on a business as a real estate agent. He offers free conveyancing on property he sells. After a complaint, the Law Society brought a charge against him for performing conveyancing without a certificate from the Law Society. Abel incurred legal expenses of \$2000 in defending the charge. Although his defence was unsuccessful he is entitled to claim \$2000 as a deduction.

Commissioner of Taxation
29/10/92

FOI INDEX DETAIL: Reference No.

Subject Ref: Legal Expenses; Illegal Activity; Allowable Deductions

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

Case Ref: *Magna Alloys & Research Pty Ltd v. FC of T* 80 ATC 4542.

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