


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.

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Draft Taxation Determination

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

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:

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