


TD 93/D80 - Income tax: has an expense been incurred for the purchase of imported trading stock which is in transit by sea and for which the bills of lading or non-negotiable waybills and finance documents relating to liability for payment have not yet been accepted?

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This document has been finalised by TD 93/138.

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: has an expense been incurred for the purchase of imported trading stock which is in transit by sea and for which the bills of lading or non-negotiable waybills and finance documents relating to liability for payment have not yet been accepted?

1. At the end of an income year the question often arises as to whether a taxpayer has incurred a loss or outgoing for the purchase of the stock in transit so as to be entitled to a deduction under subsections 51(1) or 51(2A) of the *Income Tax Assessment Act 1936*. An expense will have been incurred if there is a presently existing liability which is due but not necessarily payable (*Nilsen Development Laboratories Pty Ltd v FC of T* 81 ATC 4031; 11 ATR 505). Whether such a liability exists is a question which can only be determined by reference to the particular facts of the case and especially to the terms of the contract (see paragraph 6 of Taxation Ruling IT 2625).

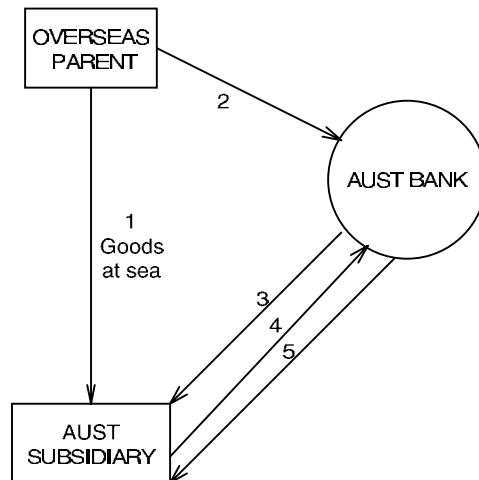
2. If upon a proper construction of both the contract and the surrounding circumstances it is concluded that there is no presently existing liability until the purchaser either

- . accepts the shipping documents (eg bill of lading); or
- . accepts or endorses the financial documents relating to the liability for payment of the goods, where the acceptance or endorsement is not conditional upon any further acts by the supplier

then a deduction will not be available under subsection 51(1) until one of those two events has occurred.

3. This view applies equally to dealings with related or unrelated parties.

Example:



Facts:

1. Goods are loaded and an invoice is sent by facsimile from Overseas Parent to Australian Subsidiary on 15/6/xx.
2. The shipping documents and bill of exchange are forwarded to Austbank on 25/6/xx.
3. Austbank forwards the bill of exchange to Australian Subsidiary on 28/6/xx.
4. Australian Subsidiary endorses the bill of exchange and returns it to Austbank on 2/7/xx.
5. Austbank releases the shipping documents to Australian Subsidiary on 2/7/xx.

As Australian Subsidiary had not 'completely subjected itself' to the purchase of the goods until it endorsed the bill of exchange on 2/7/xx no deduction will be allowable in the return of income for the year ended 30/6/xx.

Commissioner of Taxation

1/4/93

FOI INDEX DETAIL: Reference No.

Related Rulings: IT 2625

Subject Ref: Allowable deductions, bills of lading, incurred, stock in transit

Legislative Ref: ITAA 51(1), 51(2A)

Case Ref: *Nilsen Development Laboratories Pty Ltd v FC of T* 81 ATC 4031; 11 ATR 505

ATO Ref:

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