


TD 94/D22 - Income tax: is any part of a second loan obtained by a company to pay out loans used to finance expenditure on research and development activities (deductible under section 73B of the Income Tax Assessment Act 1936 (the Act)) assessable income of the company?

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Draft Taxation Determination

Income tax: is any part of a second loan obtained by a company to pay out loans used to finance expenditure on research and development activities (deductible under section 73B of the *Income Tax Assessment Act 1936* (the Act)) assessable income of the company?

1. No. Provided that at the time the eligible company receives the funds under the second loan all parties hold a firm intention and expectation that the second loan will be repaid in full.
2. Under certain arrangements for financing research and development (R&D) expenditure, a second loan is taken out to repay monies borrowed by the company to finance deductible R&D expenditure (section 73B) under terms that at the time the company receives monies under the loan, the loan is not expected to be repaid in full.
3. In these cases the amount of the loan that is not expected to be repaid is not considered to be a loan. This amount will generally constitute assessable income of the company (subsection 73B(27A), subsection 25(1) or paragraph 26(j)) in the year of income in which the company receives the loan monies. If the amount received does not constitute assessable income of the company, section 73D of the Act would operate to reduce the deduction otherwise allowable under section 73B. The basis for reducing the deduction allowed or allowable under section 73B is that the amount of the loan received is a grant or recoupment received by the company in the year of income of receipt.

Note: In this Determination the words 'received' or 'receipt' include constructively received and constructive receipt, respectively.

Example

An eligible company borrows \$300,000 to fund expenditure on research and development activities and claims a deduction in respect of this amount under the appropriate subsection of section 73B of the Act. Subsequently the company borrows \$200,000 and uses these funds to reduce the earlier loan to \$100,000. At the time the company receives the funds in respect of the \$200,000 loan there is a reasonable expectation that the loan will not be repaid (e.g. the repayment of the second loan is subject to the success of the R&D project and at the time the second loan is made such success is extremely unlikely). The \$200,000 will be included in the assessable income of the company under subsection 73B(27A) or 25(1) or paragraph 26(j).

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Related Determinations:

Related Rulings: IT 2635

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