


TD 93/141 - 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 section 8-1 of the Income Tax Assessment Act 1997 ?

 This cover sheet is provided for information only. It does not form part of *TD 93/141 - 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 section 8-1 of the Income Tax Assessment Act 1997 ?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *25 June 1997*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

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 section 8-1 of the *Income Tax Assessment Act 1997*?

1. No. The legal expenses are of a capital nature and are not deductible under section 8-1 (formerly subsection 51(1)).
2. Although these expenses are incurred by the lessee in the course of gaining or producing assessable income or carrying on a business for that purpose, the purpose of the expenditure is to secure the lessee's right to possession of the asset that is being leased and accordingly is of a capital nature.

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 section 8-1 as these expenses are of a capital nature.

Commissioner of Taxation
22/7/93

FOI INDEX DETAIL: Reference No. I 1215642

Previously issued as Draft TD 93/D120

Related Determinations:

Related Rulings:

Subject Ref: leases; legal expenses; termination of lease

Legislative Ref: ITAA 1936 51(1); ITAA 1997 8-1

Case Ref:

ATO Ref: NEWTD35

ISSN 1038 - 8982