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 subsection 51(1) of the Income Tax Assessment Act 1936 ?

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This document has changed over time. This is a consolidated version of the ruling which was published on *22 July 1993*

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).

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. 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.

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
22/7/93

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