


***TD 94/18 - Income tax: when has a taxpayer incurred, for the purposes of subsection 51(1) of the Income Tax Assessment Act 1936 , additional interest payable pursuant to a court order directing that interest be paid on a compound basis and overruling an earlier court order which required the payment of a lesser amount of interest?***

 This cover sheet is provided for information only. It does not form part of *TD 94/18 - Income tax: when has a taxpayer incurred, for the purposes of subsection 51(1) of the Income Tax Assessment Act 1936 , additional interest payable pursuant to a court order directing that interest be paid on a compound basis and overruling an earlier court order which required the payment of a lesser amount of interest?*

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).

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## Taxation Determination

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**Income tax: when has a taxpayer incurred, for the purposes of subsection 51(1) of the *Income Tax Assessment Act 1936*, additional interest payable pursuant to a court order directing that interest be paid on a compound basis and overruling an earlier court order which required the payment of a lesser amount of interest?**

1. The High Court has made it clear in such cases as *Coles Myer Finance Pty Limited v FC of T* 93 ATC 4212; 25 ATR 95, *Nilsen Development Laboratories Pty Ltd & Ors v FC of T* 81 ATC 4031; 11 ATR 505, and *FC of T v James Flood Pty Ltd* (1953) 88 CLR 492 that generally a loss or outgoing will not have been incurred for the purposes of subsection 51(1) unless there is a presently existing pecuniary liability in the year in which the deduction is claimed.

2. Whether there is a presently existing pecuniary liability is a question which must be determined in light of the particular facts of each case, and especially by reference to the terms of the contract or arrangement under which the liability is said to arise (*Nilsen Development Laboratories, James Flood Pty Ltd, and Ogilvy and Mather Pty Ltd v FC of T* 90 ATC 4836; 21 ATR 841).

3. In the case of court orders this will depend on whether the court is seeking, in the order, to interpret a particular document (or to declare how the law has always operated in respect to a particular transaction) or whether it is seeking to create a right to interest which did not previously exist. In the former case the interest will generally be incurred in the year in which the document and the law creates the right to interest. In the latter case the interest will be incurred in the year in which the Court orders that the interest be paid, provided that the interest payable on this basis is subject to reasonable estimation as at the end of the company's year of income (*Commonwealth Aluminium Corporation Ltd v FC of T* 77 ATC 4151 at 4161; 7 ATR 376 at 386).

### *Example*

*On 1 November 1990 damages are awarded against an employer in an employee's personal injuries claim against him. The court in making its orders directed that the employer pay the damages in three annual instalments and that simple interest accrue on the unpaid amount. On 1 March 1993 the court overturned its first orders and directed that compound interest be paid for the years 1991 to 1993 in respect of payments made after the second orders.*

*The additional interest payable as a result of the second orders is an allowable deduction to the employer in the 1992-1993 income year.*

**Commissioner of Taxation**

10/3/94

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Legislative Ref: ITAA 51(1)

Case Ref: Coles Myer Finance Limited v FC of T 93 ATC 4214; 25 ATR 95, Commonwealth Aluminium Corporation Ltd v FC of T 77 ATC 4151; 7 ATR 376, FC of T v James Flood Pty Ltd (1953) 88 CLR 492; 10 ATD 240; 5 AITR 579, Nilsen Development Laboratories Pty Ltd & Ors v FC of T 81 ATC 4031; 11 ATR 505, Ogilvy and Mather Pty Ltd v FC of T 90 ATC 4836; 21 ATR 841.

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