TD 95/44 - Income tax: can research and development expenditure incurred by a business be deductible under subsection 51(1) of the Income Tax Assessment Act 1936 ('the Act')?

This cover sheet is provided for information only. It does not form part of *TD 95/44 - Income tax: can research and development expenditure incurred by a business be deductible under subsection 51(1) of the Income Tax Assessment Act 1936 ('the Act')?*

This document has changed over time. This is a consolidated version of the ruling which was published on *9 August 1995*

Generated on: 3 June 2026, 09:24:13 PM

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: can research and development expenditure incurred by a business be deductible under subsection 51(1) of the *Income Tax Assessment Act 1936* ('the Act')?

1. Yes. In general terms, the expenditure is deductible under subsection 51(1) if it is both relevant and incidental to the income producing activities of the business, and not of a capital nature.

2. Deductions for research and development ('R&D') expenditure are specifically provided for under section 73B of the Act. If the criteria for deductibility under section 73B are not satisfied, the application of the general deduction provision, subsection 51(1), may be relevant. In addition, section 73A allows a deduction for expenditure on scientific research (up to 30 June 1995) but only if the expenditure is not deductible under any other provision of the Act, including subsection 51(1).

Connection to the business

3. The connection required under subsection 51(1) will generally exist if the R&D activities are conducted for the purpose of developing new or improved products, processes or know-how for use in the income producing activities of the business. However, the R&D expenditure must be undertaken in and for the purposes of carrying on an existing business. Accordingly, R&D expenditure is not deductible if, for instance, it is incurred:

(i) to enable a taxpayer to commence to carry on a business or a new branch of a business (see *Goodman Fielder Wattie Ltd. v. FC of T* 91 ATC 4438; 22 ATR 26); or

(ii) on developing a new product which is not in the same general area as products the taxpayer already manufactures (see *AAT Case 4595* (1988) 19 ATR 3847; *Case V141* 88 ATC 880).

4. Whether the R&D activities are successful or not in producing profitable results is not directly relevant to the deductibility of the expenditure. Provided the requisite connection to a business carried on for income-producing purposes exists, subsection 51(1) does not require expenditure to have actually produced income. Thus, for example, expenditure on developing an improved product which is never actually manufactured and sold may be deductible.

Capital/revenue aspects

5. Distinguishing capital from revenue expenditure is a question of fact and degree. Relevant considerations include: whether the expenditure relates to the business structure itself or the process of operating it; the nature of the asset or advantage sought (including its lasting qualities); and the degree of recurrence (see *Sun Newspapers Ltd & Associated Newspapers Ltd v. FC of T* (1938) 61 CLR 337; 5 ATD 87).

6. To be deductible, the nature of the business should require ongoing R&D activities as a necessary part of that business, so that recurring outlays on R&D are a part of the continual flow of working or operating expenses. This is most easily established where business is carried on in a field of high or rapidly advancing technology with a continuous need for R&D in order to carry on the business (see *Goodman Fielder Wattie*, supra). It may also be the case where the taxpayer undertakes continuous R&D activities the results of which are available for the purposes of producing products which are trading stock of the business (see 15 CTBR *Case 24*).

7. If the R&D expenditure creates an asset or advantage of a lasting nature for the business, this may indicate that it is on capital account. For example, if R&D in a particular case is directed to obtaining patentable rights of a lasting kind, then related expenditure may, for that reason, be of a capital nature.

Commissioner of Taxation
9 August 1995

FOI INDEX DETAIL: Reference No. I 1014503 Previously issued as Draft TD 94/D83

Related Determinations:

Related Rulings:

Subject Ref: deductible expenses; research and development

Legislative Ref: ITAA 51(1); ITAA 73A; ITAA 73B

Case Ref: Goodman Fielder Wattie Ltd v. FC of T (1991) 91 ATC 4438; 22 ATR 26; Sun Newspapers Ltd & Associated Newspapers Ltd v. FC of T (1938) 61 CLR 337; 5 ATD 87; AAT Case 4595 (1988) 19 ATR 3847; Case V141 88 ATC 880; 15 CTBR Case 24

ATO Ref: NAT 94/8204-1; PUL A1089

ISSN 1038 - 8982