


***TD 96/12 - Income tax: are registered clubs, hotels, casinos and other gaming machine operators entitled to a deduction under subsection 51(1) of the Income Tax Assessment Act 1936 for accumulated jackpot amounts displayed prior to players winning the jackpots? Note: This Taxation Determination (TD) relates to gaming machine operators that are not exempt from income tax.***

 This cover sheet is provided for information only. It does not form part of *TD 96/12 - Income tax: are registered clubs, hotels, casinos and other gaming machine operators entitled to a deduction under subsection 51(1) of the Income Tax Assessment Act 1936 for accumulated jackpot amounts displayed prior to players winning the jackpots? Note: This Taxation Determination (TD) relates to gaming machine operators that are not exempt from income tax.*



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: are registered clubs, hotels, casinos and other gaming machine operators entitled to a deduction under subsection 51(1) of the *Income Tax Assessment Act 1936* for accumulated jackpot amounts displayed prior to players winning the jackpots?**

**Note:** This Taxation Determination (TD) relates to gaming machine operators that are **not** exempt from income tax.

1. No. We consider that a gaming machine operator is not entitled to a deduction under subsection 51(1) prior to players winning the jackpots, as we believe that the operator has not incurred an outgoing equivalent to the amount of the jackpots until the players win the jackpots. Our view applies to both stand alone machines and linked machines.

#### **When an outgoing is incurred**

2. An outgoing is 'incurred' by a taxpayer under subsection 51(1) when the taxpayer comes under a presently existing liability to pay an amount (see *Coles Myer Finance Pty Ltd v. FC of T* (1993) 176 CLR 640; 93 ATC 4214; (1993) 25 ATR 95, and *Nilsen Development Laboratories Pty Ltd & Ors v. FC of T* (1981) 144 CLR 616; 81 ATC 4031; (1981) 11 ATR 505). To determine when a taxpayer becomes subject to a particular presently existing liability, the taxpayer needs to identify when the relevant event occurs which gives rise to the liability. This involves characterising the nature of the legal relationship that exists between the taxpayer and a person to whom an obligation is owed.

3. A gaming contract exists between the gaming machine operator and the player of a machine each time the player plays a coin or other credit. Part of that contract is that the player will win a jackpot if, after playing a coin or other credit, the machine displays a winning jackpot combination.

4. In some States and Territories, there is legislation setting a minimum pay-out percentage (generally, at least 85%) which each gaming machine must pay out in respect of takings on that machine. For those machines with an accumulating jackpot, a set part of the

pay-out percentage is allocated by the operator to the jackpot. Therefore, for all plays on an operator's machines, the operator knows with statistical certainty what percentage of the takings from the machines needs to be paid out in winnings, including jackpots, to the players as a whole.

5. We consider that the relevant legal relationship, as discussed in paragraph 2 of this Determination, is the relationship, on each play of a machine, between the operator and the player of the machine. Also, we consider that, under that relationship, the relevant event which, if it occurs, gives rise to an operator's liability to pay a jackpot amount, is the display of a winning jackpot combination. It is not until then that a player is entitled to claim a jackpot on a particular play. Therefore, we believe that an operator is not under a presently existing liability to pay a jackpot amount until a player wins the jackpot.

6. The legislative obligations referred to in paragraph 4 of this Determination create no enforceable entitlements for individual players against an operator on each play of a machine. The obligations ensure only that, over a particular period, the prizes won on a particular gaming machine by the players as a whole equal or exceed the minimum pay-out percentage.

#### Alternative view

7. There is an alternative view that a gaming machine operator is entitled to claim a deduction under subsection 51(1) before a particular player wins a jackpot. This view suggests that an operator is under a presently existing and inevitable liability, capable of exact calculation or reasonable estimate at any time, to pay jackpot amounts in the future as each play on a gaming machine occurs. It assumes that the operator's liability to pay a jackpot amount is not determined by its relationship with a player on a particular play, but by its continuing pay-out obligation. The obligation is said to be an overriding legislative requirement that exists concurrently with the obligations created under the contract between the operator and the player. Also, the view is said to accord with usual accounting and commercial practice and to be supported by cases such as *C of IR v. Mitsubishi Motors NZ Ltd* 95 ATC 4711, (1995) 31 ATR 350; *RACV Insurance Pty Ltd v. FC of T* 74 ATC 4169; (1974) 4 ATR 610; and *ANZ Banking Group Ltd v. FC of T* 94 ATC 4026; (1994) 27 ATR 559.

8. We consider that the alternative view fails to recognise the importance of the legal relationship between a gaming machine operator and a player each time the player plays a coin or other credit. It is this relationship that determines when the relevant event occurs, i.e., the display of a winning jackpot combination, which gives rise to the operator's liability to pay a jackpot amount. Additionally, we believe that the cases referred to in paragraph 7 of this Determination do not support the alternative view. This is because, in each of those cases, the events giving rise to particular liabilities had occurred before the end of a year of income, but were not known to the taxpayer. As discussed in paragraph 6 of this Determination, this is not the effect of the pay-out obligation.

9. Also, we believe that the *Coles Myer Finance case* (see 176 CLR at 662; 93 ATC at 4221; 25 ATR at 103) supports the view that commercial or accounting concepts are not critical in determining when an outgoing is incurred under subsection 51(1).

#### Examples

(a) *Club A Ltd is a registered club in New South Wales and has a tax year ending 30 June. The club has a separate bank account in which it sets aside amounts for Linked Progressive Jackpots, according to the Liquor Administration Board's regulations. On 31 March 1994, Club A paid \$10,000 into the account. As at the year ended 30 June 1994, the club had set aside a total amount of \$24,750. This amount represents the jackpot the club*

would have to pay if a player won the jackpot on that date. No player has won the jackpot as at the close of business on 30 June 1994.

The club is not entitled to a deduction either as at 31 March 1994 or at year end because a player has not won the jackpot.

(b) Casino B Pty Ltd has a tax year ending 30 April. Just before closing time on 30 April 1996, a player won a jackpot of \$8,452 on one of the casino's Cashcade systems. The casino paid the player by cheque on 3 May 1996.

The casino is entitled to a deduction in the year ended 30 April 1996 because the casino incurred the expenditure when the player won the jackpot.

(c) Hotel C Pty Ltd has a tax year ending 30 June. As at the year ended 30 June 1995, the jackpots displayed on the hotel's four Stand Alone Progressive gaming machines totalled \$6,119. No player has won a jackpot as at the close of business on 30 June 1995.

The hotel is not entitled to a deduction in the year ended 30 June 1995 because a player has not won a jackpot.

### Commissioner of Taxation

15 May 1996

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FOI INDEX DETAIL: Reference No. I 1015001 Previously issued as Draft TD 95/D16

Related Determinations:

Related Rulings:

Subject Ref: allowable deductions; accrued expenses; accumulation fund; clubs; deductibility; gaming; incurred

Legislative Ref: ITAA 51(1)

Case Ref: *Coles Myer Finance Pty Ltd v. FC of T* (1993) 176 CLR 640; 93 ATC 4214; (1993) 25 ATR 95; *Nilsen Development Laboratories Pty Ltd & Ors v. FC of T* (1981) 144 CLR 616; 81 ATC 4031; (1981) 11 ATR 505; *C of IR v. Mitsubishi Motors NZ Ltd* 95 ATC 4711, (1995) 31 ATR 350; *RACV Insurance Pty Ltd v. FC of T* 74 ATC 4169; (1974) 4 ATR 610; *ANZ Banking Group Ltd v. FC of T* 94 ATC 4026; (1994) 27 ATR 559

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