

TR 94/26A - Addendum - Income tax: subsection 51(1) - meaning of incurred - implications of the High Court decision in Coles Myer Finance

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Addendum: Income tax: subsection 51(1) - meaning of 'incurred' - implications of the High Court decision in *Coles Myer Finance*

*This Addendum forms part of the Ruling and, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**, it is a public ruling for the purposes of that Part. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

The Tax Law Improvement Project is restructuring, renumbering and rewriting the income tax law in plain language. The Parliament is amending the income tax law progressively to reflect these aims. As new laws come into effect, Taxation Rulings about old laws are being brought into line with them.

This Addendum amends Taxation Ruling TR 94/26, in relation to the 1997-98 or a later income year, as follows:

1. **Paragraph 1**

Omit 'subsection 51(1) of the *Income Tax Assessment Act 1936*'; substitute 'section 8-1 of the *Income Tax Assessment Act 1997* (the 1997 Act) (formerly subsection 51(1) of the *Income Tax Assessment Act 1936* (the 1936 Act))'.

2. **After paragraph 2**

Insert:

'2A. Section 8-1 of the 1997 Act, to which this Ruling refers, expresses the same ideas as subsection 51(1) of the 1936 Act.'

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3. **Paragraph 3**

Omit 'subsection 51(1)'; substitute 'the section'.

4. **Paragraph 7**

Omit 'either of the positive limbs of subsection 51(1)'; substitute 'either limb of subsection 8-1(1)'.

5. **Paragraph 12**

Omit 'subsection 51(1)'; substitute 'the section'.

6. **Paragraph 14**

- (a) Omit 'are relevant to subsection 51(1)'; substitute 'were relevant to the former subsection 51(1) (now section 8-1)';
- (b) Omit 'subsection 51(1)' (second occurring); substitute 'the section'; and
- (c) Omit 'subsection 51(1)' (third occurring); substitute 'the former subsection 51(1)'.

7. **Paragraph 16**

Omit 'subsection 51(1)'; substitute 'section 8-1 (or the former subsection 51(1))'.

8. **Paragraph 19**

Omit 's.51(1)'; substitute '[the former] s.51(1)'.

9. **Paragraph 23**

Omit 'subsection 51(1)'; substitute 'the former subsection 51(1)'.

10. **Paragraph 24**

Omit 'subsection 51(1)'; substitute 'the former subsection 51(1)'.

11. **Paragraphs 25 and 29**

Omit 'section 51'; substitute '[the former] section 51'.

12. Paragraph 33

Omit 'subsection 51(1)'; substitute '[the former] subsection 51(1)'.

13. After paragraph 34

Omit '**embodied in 51(1)**'; substitute '**embodied in section 8-1**'.

14. Paragraph 36

Omit 'subsection 51(1)'; substitute '[the former] subsection 51(1)'.

15. Paragraph 38

Omit 'subsection 51(1)'; substitute 'the former subsection 51(1) (now section 8-1)'.

16. Paragraph 39

(a) Omit 'subsection 51(1)'; substitute 'the former subsection 51(1)'; and

(b) Omit:

'Nor can it be viewed as overturning the other requirements of subsection 51(1) (e.g. nexus with the production of assessable income and the negative limbs)'; substitute:

'Nor can it be viewed as overturning the other requirements of the section (e.g., nexus with the production of assessable income and the negative limbs of the former subsection 51(1) now in subsection 8-1(2))'.

17. Paragraph 42

Omit 'subsection 51(1)'; substitute 'the former subsection 51(1) (now section 8-1)'.

18. Paragraph 47

Omit ', for the purposes of both subsection 51(1) and (2),'

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19. Omit 'subsection 51(1)' (where otherwise occurring); substitute 'section 8-1'.

Commissioner of Taxation

22 April 1998

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