



ATO Interpretative Decision


ATO ID 2002/985

Income Tax

Research and Development - 3 Year History - Additional Deduction

FOI status: may be released

Status of this decision: Decision Current

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Issue

Does the taxpayer satisfy the requirement of establishing a three year history outlined in paragraph 73Q(1)(b) of the *Income Tax Assessment Act 1936* (ITAA 1936), for the three years preceding the 2002 financial year?

Decision

Yes.

The taxpayer was in receipt of an Research & Development (R&D) Start Grant for the 1999 and 2000 financial years and was registered with the Industry Research and Development Board (IRDB), under section 39J of the *Industry Research and Development Act 1986* (IR&DA) for the 2001 financial year.

Facts

The taxpayer is a company incorporated in Australia.

The taxpayer and other parties applied for a grant under the IRDB's R&D Start Program.

The grant was approved and the date of commencement of the R&D Start Grant was 1 July 1998 with a completion date of 30th June 2001. The grant was approved in relation to research and development activities to be undertaken in the 1999, 2000 and 2001 financial years.

The applicant and the other parties agreed to execute the R&D Start Grant agreement (the agreement) in accordance with the conditions attaching to the grant.

One of the conditions in the agreement states that the grant is made to the taxpayer and the other parties for the eligible project as described in the agreement.

The grant was calculated as 50% of the estimated project costs as outlined by the taxpayer and the other parties. This grant was to be allocated to all parties according to their individual contribution to the project and their actual individual costs.

The grant was paid in 6 monthly progressive payments contingent on the IRDB being satisfied that the relevant milestones were achieved, all progress reports submitted when due, and that they met all other obligations.

In the agreement it also states that within 1 month of the date of the agreement the taxpayer and the other parties must establish a project management committee in relation to the project. The management committee must comprise the people named in the agreement.

The agreement also states that the IRDB may terminate the agreement if the taxpayer and the other parties breach certain conditions or obligations. In the event that this action was taken, the IRDB may request repayment of all or part of the grant together with interest from either the taxpayer and the other parties. Therefore the taxpayer and the other parties are liable to repay all or part of the grant together with interest if the IRDB acts to terminate the agreement.

The taxpayer has also advised that in the 2001 financial year they were registered under section 39J of the *Industry Research and Development Act 1986*, with the IRDB for the purposes of the Research and Development Tax Concession.

Reasons for Decision

Section 73Q of the ITAA 1936 discusses the eligibility criteria for claiming an additional deduction under section 73Y of the ITAA 1936.

Subsection 73Q(1) of the ITAA 1936 states that an eligible company is eligible to claim an additional deduction under section 73Y for a year of income (the "deduction year") if the company:

(a) can deduct an amount for incremental expenditure under subsection 73B(13) or (14) for the deduction year; and

(b) has deducted or can deduct an amount for incremental expenditure under that subsection for each of the preceding 3 years of income.'

The taxpayer wants advice as to whether they satisfy the requirements of paragraph 73Q(1)(b) of the ITAA 1936 where the 'deduction year' is the 2002 financial year.

An 'eligible company' is defined in subsection 73B(1) of the ITAA 1936 to mean 'a body corporate incorporated under a law of the Commonwealth or of a State or Territory'. The taxpayer is a body corporate incorporated under a law of the Commonwealth and is therefore an 'eligible company' for the purposes of section 73Q of the ITAA 1936.

The taxpayer will satisfy the requirement of paragraph 73Q(1)(b) of the ITAA 1936 if they have deducted and could deduct an amount for incremental expenditure under subsection 73B(13) or (14) for each of the preceding three years of income.

'Incremental expenditure' is defined in subsection 73P(2) of the ITAA 1936 to mean 'expenditure that is research and development expenditure except:

(a) expenditure to lease or hire plant; and

(b) expenditure under a contract to the extent that it is, in substance, for the acquisition of plant and not for the receipt of services'.

A deduction for 'research and development expenditure' is allowed under subsection 73B(13) or (14) of the ITAA 1936 but a prerequisite to claiming an amount under these provisions is the requirement contained in subsection 73B(10) of the ITAA 1936. It provides that an eligible company must be registered for that year of income, in relation to the research and development activities under section 39J of the IR&DA.

The taxpayer was registered under section 39J of the IR&DA for the 2001 financial year, but was not registered for the 1999 or 2000 financial years and therefore could not deduct an amount in relation to those years under

subsection 73B(13) or (14) of the ITAA 1936.

However, subsection 73Q(3) of the ITAA 1936 provides that 'for the purposes of paragraph (1)(b), subsection (2) of this section and subsection 73R(1), the eligible company or any of its group members is treated as if it had deducted or can deduct an amount for incremental expenditure under subsection 73B(13) or (14) for a year of income if the company received a start grant in respect of that year of income'.

A 'start grant' is defined in subsection 73P(2) of the ITAA 1936 to mean 'a subsidy or grant paid to an eligible company:

- (a) under an agreement between the company and the Board entered into under the program known as the R&D Start Program; and
- (b) in respect of a year of income in relation to which the company is not registered as mentioned in subsection 73B(10).'

The 'Board' as used in paragraph (a) above, is defined in subsection 73B(1) of the ITAA 1936 to mean 'the Industry Research and Development Board established by the Industry Research and Development Act 1986'.

The taxpayer and other parties are entitled to receive an R&D Start Grant for the 1999 and 2000 years under the R&D Start Program.

Therefore where the 'deduction year' for the purposes of section 73Q of the ITAA 1936 is the 2002 financial year, the taxpayer satisfies the requirement set out in paragraph 73Q(1)(b) of the ITAA 1936, that they have or can deduct an amount for incremental expenditure under subsection 73B(13) or (14) of the ITAA 1936 for each of the preceding three years of income. For the 1999 and 2000 financial years they were entitled to receive a start grant and subsection 73Q(3) deems that they satisfy paragraph 73Q(1)(b) for these years and for the 2001 financial year they were registered under section 39J of the IR&DA. The expenditure listed in the application for registration with the IRDB indicates that they have expenditure that would qualify as incremental expenditure for the 2001 financial year.

Date of decision: 18 July 2002

Year of income: Year ended 30 June 2002

Legislative References:

Income Tax Assessment 1936

- subsection 73B(1)
- subsection 73B(10)
- subsection 73B(13)
- subsection 73B(14)
- subsection 73P(2)
- section 73Q
- subsection 73Q(1)
- paragraph 73Q(1)(b)
- subsection 73Q(3)
- subsection 73R(1)
- section 73Y

Industry Research and Development Act 1986

Section 39J

Keywords

Research & development expenses

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