



ATO Interpretative Decision

ATO ID 2004/703

Income tax

Research and Development: 'R&D group turnover' - supplies made in the course of carrying on business

FOI status: may be released

Status of this decision: Decision Current

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Issue

In calculating the 'value of supplies' under paragraph 73K(1)(b) of the *Income Tax Assessment Act 1936* (ITAA 1936) of the definition of 'R&D group turnover', for a company that has carried on a business of acting as a lender in providing mortgage loans, is the amount received for the assignment of its loan portfolio a supply made 'in the course of carrying on a business' in the terms of the definition of 'value of supplies' in sub-section 73H(2) of the ITAA 1936?

Decision

No. The assignment agreement entered into by the company was a special circumstance or unusual event and was not within 'the course of carrying on a business' in terms of the definition of 'value of supplies' in subsection 73H(2) of the ITAA 1936.

Facts

The taxpayer is an 'eligible company' as defined in subsection 73B(1) of the ITAA 1936. It undertook 'research and development activities' (as defined in subsection 73B(1) of the ITAA 1936) in the relevant year of income. The eligible company incurred expenditure on these activities.

The eligible company was grouped with another company in the manner described in section 73L of the ITAA 1936 during the relevant year of income.

Under section 73K of the ITAA 1936, when determining its 'R&D group turnover', the eligible company was required to include 'the value of supplies made in the year of income by other persons while they were grouped with the company'.

In the relevant year of income, the company grouped with the eligible company in the manner described in section 73L of the ITAA 1936, acted as a lender providing mortgage loans.

During the relevant year of income, as a result of unilateral actions taken by a third party, the company grouped with the eligible company ceased to provide loans, and entered into an agreement to assign the entire loan portfolio of undischarged mortgages.

Consideration was received by the company grouped with the eligible company as a result of assigning the loan portfolio during the relevant year of income.

Reasons for Decision

Subsection 73K(1) of the ITAA 1936, provides that the 'R&D group turnover' of an eligible company for a year of income is the sum of:

- (a) the value of the supplies the company made in the year of income; and
- (b) the value of the supplies made in the year of income by other persons while they were grouped with the company; ...

'Value of the supplies' is defined in subsection 73H(2) of the ITAA 1936 as including supplies (both taxable and other) made during the year in the course of carrying on a business or in the course of carrying on research and development activities. The value of taxable supplies and prices of other supplies are as defined by section 9-75 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

The 'R&D group turnover' rules are substantially based on those found in Subdivision 328-F of the *Income Tax Assessment Act 1997* (ITAA 1997), concerning eligibility to be an STS taxpayer. One difference between them can, however, be found in the fact that the equivalent STS concept, 'value of the business supplies', as defined in subsection 995-1(1) of the ITAA 1997, requires the supplies to have been made in the **ordinary** course of carrying on business, whereas the word **ordinary** does not appear in the 'R&D group turnover' rules.

The difference in wording would seem though, to be inadvertent. Thus, paragraph 3.13 of the Explanatory Memorandum to Taxation Laws Amendment (Research and Development) Bill 2001, being that which introduced section 73K of the ITAA 1936, says:

The value of the supplies a taxpayer makes during an income year is the sum of the values of the supplies the taxpayer made during the year in the ordinary course of carrying on business or in the course of carrying on R&D activities and is calculated exclusive of GST payable on supplies. ... (emphasis added)

The Explanatory Memorandum relating to the introduction of section 73K of the ITAA 1936, supports the proposition that the relevant 'R&D group turnover' rules should be interpreted as if the word, 'ordinary' appeared before 'course of carrying on a business', in subsection 73H(2) of the ITAA 1936.

The Commissioner's views on what will be in the 'ordinary' course of carrying on business, for the purposes of calculating STS group turnover, are set out in paragraphs 20 to 23, of Taxation Ruling TR 2002/11 (TR 2002/11) and paragraph 21 provides that:

a supply is made in the ordinary course of carrying on a business if it is a supply of the kind regularly or customarily made by the entity in the course of carrying on its business, arising out of no special circumstance or unusual event.

The unilateral action of third parties, indicates that the assignment transaction by the company that was grouped with the eligible company was not 'in the course of carrying on a business', in accordance with the subsection 73H(2) of the ITAA 1936 interpretation of 'value of supplies'. This is supported by notion that the company's pivotal role and function was to provide mortgage loans. It cannot, therefore, be concluded that the company entered into the assignment agreement in the 'ordinary' course of carrying on business as a lender, but rather, that it was entered into as a 'special circumstance or unusual event', within the meaning of paragraph 21 of TR 2002/11.

Accordingly, the consideration received under the assignment agreement by the company that is grouped with the eligible company is not to be included in the 'value of supplies made' under section 73K of the ITAA 1936 for the

purposes of determining the eligible company's 'R&D group turnover' during the relevant year of income.

Date of decision: 19 July 2004

Year of income: Year ended 30 June 2003

Legislative References:

Income Tax Assessment Act 1936

paragraph 73K(1)(b)

subsection 73H(2)

subsection 73B(1)

section 73L

section 73K

subsection 73K(1)

Income Tax Assessment Act 1997

subdivision 328-F

subsection 995-1(1)

A New Tax System (Goods and Services Tax) Act 1999

section 9-75

Related Public Rulings (including Determinations)

Taxation Ruling TR 2002/11

Related ATO Interpretative Decisions

ATO ID 2003/343

ATO ID 2003/701

ATO ID 2003/702

Other References

Explanatory Memorandum to Taxation Laws Amendment (Research and Development) Bill 2001

Keywords

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