



ATO Interpretative Decision


ATO ID 2004/808

Income Tax

Research and Development: 'group membership period' and effect of viable business transfer

FOI status: may be released

Status of this decision: Decision Current

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Issue

Is a viable business transfer necessary for an eligible company to claim the research and development additional deduction under section 73Y of the Income Tax Assessment Act 1936 (ITAA 1936), where that company has:

- deducted, under subsection 73B(13) or subsection 73B(14) of the ITAA 1936, an amount for incremental expenditure in the current year of income and in each of the preceding three years of income; and
- experienced a change in control during that time?

Decision

No. An eligible company which has met the eligibility requirements of subsection 73Q(1) of the ITAA 1936, can be eligible to claim the research and development additional deduction under section 73Y of the ITAA 1936 without a viable business transfer, even where it has experienced this change in control.

Facts

Company A is an eligible company which undertakes research and development activities in Australia.

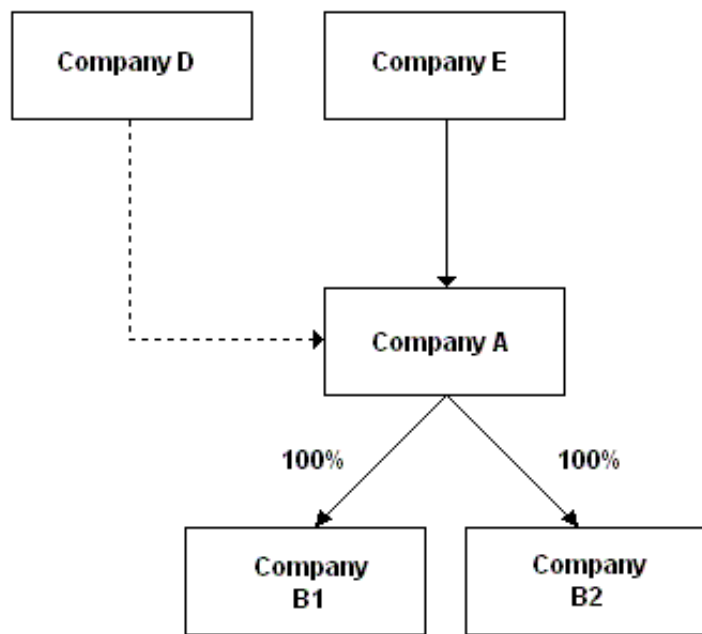
For the 2003-04 year of income, and for each of the preceding three years of income, Company A has deducted amounts for 'incremental expenditure' under subsection 73B(14) of the ITAA 1936. 'Incremental expenditure' is defined by section 73P of the ITAA 1936.

Company A was wholly owned by Company D until 30 April 2004 when it was acquired by Company E. No change to the business of Company A occurred.

Company D and Company E are foreign companies which are not liable to tax in Australia. They cannot and do not claim deductions for research and development in Australia.

Company A acquired 100% of shares in both Company B1 and Company B2 on 30 June 2003. Both Company B1 and Company B2 are eligible companies and undertake research and development activities in Australia. Both have deducted amounts for 'incremental expenditure' under subsection 73B(14) of the ITAA 1936, for the 2003-04 year of income.

The group is not consolidated and does not intend to consolidate.



Reasons for Decision

Subsection 73Q(1) of the ITAA 1936 allows an eligible company to deduct an amount under section 73Y of the ITAA 1936, if that company:

- can deduct an amount for incremental expenditure under either subsection 73B(13) or subsection 73B(14) of the ITAA 1936 for the current year of income, and
- has done or can do so for each of the preceding three years.

Company A has deducted amounts for 'incremental expenditure', as defined by section 73P of the ITAA 1936, under subsection 73B(14) of the ITAA 1936, for the 2003-04, 2002-03, 2001-02 and 2000-01 years of income. Company A is therefore eligible to claim the additional deduction under section 73Y of the ITAA 1936.

Group membership period

Subsection 73R(2) of the ITAA 1936, requires Company A to work out which companies are grouped with it under section 73L of the ITAA 1936, on the last day of the Y_0 year of income (section 73P of the ITAA 1936 provides that Y_0 is the year of income for which an eligible company is working out its assessable income and deductions. Y_{-1} , Y_{-2} and Y_{-3} are, respectively, the three years preceding the Y_0 year of income). Here, the last day of Y_0 is 30 June 2004. At 30 June 2004, Company A was grouped with Company B1, Company B2 and Company E. Company A, Company B1, Company B2 and Company E are therefore 'primary group members'. Note that Company A is itself a primary group member.

Company A must also work out the day before the last day of the Y_0 year of income or the first day of the Y_{-3} year of income (here 1 July 2000), whichever is the later, when any primary group member was controlled by a person other than the person who controlled it on the last day of Y_0 . The period between this day and the last day of the

Y_0 year of income is 'that' company's (that is, the company of whom control has changed) 'group membership period'.

Control of Company A changed on 30 April 2004 when it was acquired by Company E. As this is the later date, Company A's 'group membership period' is 30 April 2004 to 30 June 2004 (inclusive). Control of Company B1 and Company B2 changed on 30 June 2003 when they were acquired by Company A. However, control of Company B1 and Company B2 also changed again, on 30 April 2004, when Company A was acquired by Company E, so their group membership periods are also 30 April 2004 to 30 June 2004 (inclusive).

Calculating the additional deduction

Sections 73T to 73V of the ITAA 1936 require a company seeking to claim the additional deduction to calculate its 'R&D spend' for each of the Y_0 , Y_{-1} , Y_{-2} and Y_{-3} years of income. 'R&D spend' is defined by section 73P of the ITAA 1936 as 'the sum of:

- (a) the incremental expenditure of the eligible company for the year of income incurred during its group membership period, and
- (b) the incremental expenditure of each group member of the eligible company for the year of income incurred during its group membership period.

Paragraph (a) relates to the group membership period of the claimant (that is Company A) whereas paragraph (b) is concerned with the group membership period of the particular other group member (that is, Company B1 or Company B2, as relevant).

The R&D Spend for Company A for Y_0 will include only the incremental expenditure it incurred during the portion of its group membership period that falls within the Y_0 year of income. That is, the incremental expenditure incurred from between 30 April 2004 and 30 June 2004. We have called this amount of expenditure 'XA'.

To this amount, is added the incremental expenditure of Company B1 and Company B2 incurred during the portion of their respective group membership periods that fall within the Y_0 year of income. We have called these amounts 'XB1' and 'XB2'. The total of 'XA', 'XB1' and 'XB2' equals Company A's R&D spend for the Y_0 year of income. We have called this total amount 'XX'. (There were no intra-group transactions).

No part of Company A's group membership period covers the Y_{-1} , Y_{-2} or Y_{-3} years of income. Therefore the amounts included under paragraph (a) of the definition of 'R&D spend' for each of these income years is zero. Similarly, no part of the group membership periods of Company B1 and Company B2 fall within the Y_{-1} , Y_{-2} and Y_{-3} years of income, so the amounts included in Company A's 'R&D spend' under paragraph (b) of the definition in section 73P of the ITAA 1936, for each of these years is also zero.

R&D Spend for Company A is therefore:

Company	Y_0	Y_{-1}	Y_{-2}	Y_{-3}
Company A	\$XA	0	0	0
Company B1	\$XB1	0	0	0
Company B2	\$XB2	0	0	0
TOTAL	\$XX	0	0	0

Section 73W of the ITAA 1936 provides that the premium amount is based on the excess of the current year R&D Spend over the average R&D Spend for the previous three years, less any adjustment where annual incremental expenditure during the three year history fluctuated by more than 20%.

Under subsection 73X(1) of the ITAA 1936 the premium amount will only be distributed between group members who increased the incremental expenditure incurred during their individual group membership period for the Y_0 year of income above the level of incremental expenditure incurred during their individual group membership period for the Y_{-1} year. These group members are called 'increasing members'.

Company A incurred an amount of incremental expenditure (\$XP) in the Y₀ year of income during its group membership period. However, as Company A's group membership period is 30 April 2004 to 30 June 2004, Company A has incurred nil incremental expenditure during its group membership period for the Y₋₁ year. Company A is therefore an 'increasing member' and can claim a deduction under section 73Y of the ITAA 1936 for the amount worked out under subsection 73Y(2) of the ITAA 1936.

Company A's entitlement to this deduction arises without there having been any written agreement concerning it becoming a group member with a viable business ('a viable business transfer' agreement), for the purposes of subsection 73R(4) and subsection 73R(5) of the ITAA 1936.

Date of decision: 16 September 2004

Year of income: Year ended 30 June 2004

Legislative References:

Income Tax Assessment Act 1936

subsection 73Q(1)

section 73B

section 73P

section 73R

section 73T

section 73U

section 73V

section 73X

section 73Y

Keywords

Research and development expenses

Research and development additional deduction

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