



ATO Interpretative Decision

ATO ID 2005/358

Income tax

Research and Development: 'Aggregate research and development amount' where core technology expenditure not deducted

FOI status: may be released

Status of this decision: Decision Current

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Issue

Where an eligible company chooses not to deduct an amount of core technology expenditure under subsection 73B (12A) of the *Income Tax Assessment Act 1936* (ITAA 1936), is the amount included in the company's 'aggregate research and development amount' as defined in subsection 73B(1) of the ITAA 1936?

Decision

Yes. The amount allowable as a deduction under subsections 73B(12) or (12A) of the ITAA 1936 for core technology expenditure is included in the 'aggregate research and development amount' of an eligible company.

Facts

The taxpayer is an 'eligible company' as defined in subsection 73B(1) of the ITAA 1936. The company incurred expenditure on 'research and development activities' (as defined in subsection 73B(1) of the ITAA 1936) in the year of income Y3 (2 years after the income year Y1 referred to below).

The company registered the research and development activities with the Industry, Research and Development Board (the Board) under section 39J of the *Industry Research and Development Act 1986* (IR&D Act 1986).

The company has an R&D plan that complies with guidelines formulated by the Board under section 39KA of the IR&D Act 1986, as required by subsection 73B(2BA) of the ITAA 1936.

The company purchased 'core technology', as defined in subsection 73B(1) of the ITAA 1936, in relation to its registered 'research and development activities', being 'core technology' within the meaning of section 73B(1AB) of the ITAA 1936.

The company incurred 'core technology expenditure' as defined in subsection 73B(1) of the ITAA 1936 in the year of income Y1 in relation to the acquisition of that 'core technology'.

During the year of income Y3, the company incurred research and development expenditure that was related to the 'core technology'.

The company was entitled to claim a deduction in relation to the 'core technology expenditure' under section 73B(12A) of the ITAA 1936 in relation to the year of income Y3.

The company did not claim any 'core technology' expenditure in the year of income Y3.

Reasons for Decision

Subsection 73B(1) of the ITAA 1936 defines the term 'aggregate research and development amount' to include, in addition to other amounts:

(aa)

the deductions allowed for core technology expenditure under subsections (12) and (12A) in the company's assessment in respect of income of the year of income.

Subsection 73B(12A) of the ITAA 1936 allows a deduction for core technology expenditure where an eligible company has incurred core technology expenditure in respect of core technology (the relevant core technology). A deduction is available under this subsection where the expenditure is incurred under a contract entered into at or after 5 pm, by legal time in the Australian Capital Territory, on 23 July 1996, and the company has incurred research and development expenditure that is related to the relevant core technology. The deduction allowable under subsection 73B(12A) of the ITAA 1936 is limited to one third of the related research and development expenditure.

During the year of income Y3, the company incurred research and development expenditure that is related to the relevant core technology. Subsection 73B(12A) of the ITAA 1936 entitles the company to a deduction in relation to the 'core technology expenditure' incurred in the year of income Y1 up to one third of the related research and development expenditure.

The purpose of the concept of 'aggregate research and development amount' in subsection 73B (1) of the ITAA 1936 is to fix a requirement of a minimum level of the sum of certain types of expenditure that may qualify for deduction (expenditure threshold test). It is also relevant to determining eligibility for tax offset under section 73J of the ITAA 1936.

The eligibility for a deduction in relation to the expenditure is being tested prior to any assessment being made. It follows that the elements of the subsection 73B(1) definition of 'aggregate research and development amount', test for the potential for the specified types of expenditure to be deductible (should the other requirements for deductibility be met), rather than testing whether or not they have been deducted.

Therefore, although the company chose not to claim a deduction for core technology expenditure, the core technology deduction calculated in accordance with subsection 73B(12A) of the ITAA 1936, is included in the company's 'aggregate research and development amount' in the year of income Y3.

Date of decision: 17 November 2005

Year of income: Year ended 30 June 2004

Legislative References:

Income Tax Assessment Act 1936

subsection 73B(1)
subsection 73B(1AB)
subsection 73B(2BA)
subsection 73B(12)
subsection 73B(12A)
section 73J

Industry Research and Development Act 1986

section 39J

Keywords

Aggregate research & development amount
Deductions & expenses
Research & development core technology expenditure
Research & development expenses

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