



ATO Interpretative Decision

ATO ID 2005/86

Income Tax

Research and Development Tax Offset: 'R&D group turnover' where ownership of interests in an eligible company by an entity in capacity as trustee

FOI status: may be released

Status of this decision: Decision Current

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Issue

Where an eligible company is controlled by a person in a capacity as trustee, is the 'value of supplies' made by this person, as defined by subsection 73H(2) of the *Income Tax Assessment Act 1936* (ITAA 1936), based only on those supplies made by it as trustee?

Decision

Yes. The 'value of supplies' made by the person in its capacity as trustee, to be included in the 'R&D group turnover' of the eligible company under section 73K of the ITAA 1936, is based only on those supplies made by this person as trustee of the relevant trust estate.

Facts

The taxpayer is an 'eligible company' as defined in subsection 73B(1) of the ITAA 1936, and is an Australian company limited by shares.

Trustee Company owns interests in the eligible company which carry the right to receive more than 50% of distributions of income or capital by the eligible company.

Trustee Company is a wholly owned subsidiary of Parent, and also a trustee of a unit trust. Under the terms of the trust deed, no unit holder has any rights in relation to the voting power of the eligible company, nor does any unit holder have any right with regard to distributions of income or capital by the eligible company.

The unit trust has not made any distributions in the last four years of income and no person(s) otherwise control the trust estate within the meaning of subsection 73L(4) of the ITAA 1936.

The eligible company does not own interests in any company under subsection 73L(3) of the ITAA 1936 and does not control any trust estate or partnership under subsections 73L(3), 73L(4) or 73L(5) of the ITAA 1936. Nor is the eligible company affiliated with any person(s) under section 73M of the ITAA 1936.

Reasons for Decision

In addition to the other eligibility criteria set out in section 73J of the ITAA 1936, paragraph 73J(1)(d) of the ITAA 1936 states that an eligible company is eligible to choose the tax offset for the tax offset year, being the 2003-04 income year, if the R&D group turnover of the company for that year is less than \$5,000,000. 'R&D group turnover' is defined by section 73K of the ITAA 1936, as the sum of:

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

reduced by [not presently relevant]:

'Value of supplies' is defined in section 73H of the ITAA 1936.

Section 73L of the ITAA 1936 determines whether a person is grouped with another person, for the purposes of paragraph (d) of subsection 73J(1) of the ITAA 1936 and section 73K of the ITAA 1936.

Under subsection 73L(1) of the ITAA 1936, a person is grouped with another person at a time in a year of income if, at that time:

- (a) either person controls the other person in the way described in this section;
- (b) both persons are controlled in the same way by the same third person; or
- (c) the persons are affiliates of each other.

The eligible company does not own any interests in any other person within the meaning of subsection 73L(3) of the ITAA 1936. Nor does it control any trust estate or partnership under subsections 73L(3), 73L(4) or 73L(5) of the ITAA 1936. Further, the eligible company is not an affiliate of any person under section 73M of the ITAA 1936. The question therefore is to determine whether any person controls the eligible company under subsection 73L(3) of the ITAA 1936.

Subsection 73L(3) of the ITAA 1936 states that:

A person controls another person if the first person, or the first person together with the first person's affiliates:

- (a) legally or beneficially own, or have the right to acquire the legal or beneficial ownership of, interests in the other person that carry between them the right to receive more than 50% of any distribution of income or capital by the other person; or
- (b) if the other person is a company - legally or beneficially own or have the right to acquire the legal or beneficial ownership of, interests in the company that carry between them the right to exercise or control the exercise of, more than 50% of the voting power in the company.

Under the terms of the trust deed, no unit holder has any rights in relation to the voting power of the eligible

company, nor does any unit holder have any rights with regard to distributions of income or capital by the eligible company.

Trustee Company does own relevant interests concerning the eligible company and is therefore the relevant person for the purposes of subsection 73L(3) of the ITAA 1936. Under this subsection Trustee Company does control the eligible company as its ownership of these interests entitles it to greater than the required percentage of distributions of income or capital by the eligible company.

However, the question of whose turnover should be included for the purposes of section 73K of the ITAA 1936 remains.

Trustee Company owns the relevant interests in the eligible company as trustee of the unit trust and not in any private or other capacity. For that reason, the value of supplies relevant for section 73K of the ITAA 1997 purposes are those made by Trustee Company as trustee for the unit trust. It is therefore the value of supplies of the unit trust made by Trustee Company as trustee, that is included in the R&D group turnover of the eligible company. The value of supplies made by Trustee Company in any capacity other than as trustee for the unit trust is not relevant here.

A further step is to determine whether any other person is grouped with Trustee Company as trustee of the unit trust, so as to affect the calculation of the eligible company's 'R&D group turnover'. That is, whether any other person controls or is otherwise grouped with the unit trust. On the facts, no other person is grouped with the unit trust under subsection 73L(4) of the ITAA 1936 and Trustee Company does not control the unit trust under subsection 73L(4) of the ITAA 1936. Therefore, the value of supplies made by Parent will not be included in the eligible company's 'R&D Group turnover'.

In conclusion, the 'R&D group turnover' of the eligible company, is the sum of the value of supplies made by it together with the value of supplies made by Trustee Company as trustee of the unit trust.

Date of decision: 14 March 2004

Year of income: Year ended 30 June 2004

Legislative References:

Income Tax Assessment Act 1936
paragraph 73J(1)(d)
section 73H
section 73K
section 73L

Keywords

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