



ATO Interpretative Decision

ATO ID 2006/137

Income Tax

Research and development: consolidated group - R & D activities of subsidiary member deemed to be carried out on behalf of head company - not on behalf of another person

FOI status: may be released

Status of this decision: Decision Current

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Issue

Does subsection 73B(9) of the *Income Tax Assessment Act 1936* (ITAA 1936), when affected by the single entity rule (section 701-1 of the *Income Tax Assessment Act 1997* (ITAA 1997)), prevent the head company of a consolidated group from claiming a deduction under section 73B of the ITAA 1936, for expenditure on research and development activities carried out on behalf of a subsidiary member of the consolidated group?

Decision

No Research and development activities carried out 'on behalf of' a subsidiary member of the consolidated group are taken to be carried out on behalf of the head company, and not on behalf of any other person, for the purposes of subsection 73B(9) of the ITAA 1936.

Facts

In the relevant income year, a company is the head company of a consolidated group for the purposes of Part 3-90 of the ITAA 1997.

'Research and development activities' (as defined in subsection 73B(1) of the ITAA 1936), are carried out by an unrelated entity 'on behalf of' a subsidiary member of the consolidated group (the subsidiary member effectively owns the results, controls the conduct and bears the financial risk of the research and development activities undertaken).

The research and development activities are not undertaken on behalf of any other person.

The subsidiary member formed part of the consolidated group for the whole of the relevant income year.

Reasons for Decision

Subsection 73B(9) of the ITAA 1936 provides that a deduction is not allowable under section 73B of the ITAA 1936 in respect of expenditure incurred by an eligible company for the purpose of carrying on research and development activities 'on behalf of any other person'. Expenditure of that kind is disregarded for the purposes of determining a deduction under section 73B. As the company in question is the head company of a consolidated group, it is necessary to consider how subsection 73B(9) applies when affected by the single entity rule.

Section 701-1 of the ITAA 1997 (the single entity rule) provides that if an entity is a subsidiary member of a consolidated group for any period, it and any other subsidiary member of the group are taken for 'head company core purposes' and 'entity core purposes' to be part of the head company, rather than separate entities during that period.

The intended operation of the single entity rule is to apply the income tax laws to the consolidated group as if it were a single entity (being the head company) (see Taxation Ruling TR 2004/11). The subsidiary member of the consolidated group is treated as part of the head company, rather than a separate entity for the purposes of working out income tax liability or losses. The single entity rule results in actions and transactions of the subsidiary member (including the carrying out of research and development activities or the engaging of another to carry out research and development activities on the subsidiary member's behalf) being treated as undertaken by the head company.

As the subsidiary member is treated as part of the head company rather than as a separate person for the purposes of applying subsection 73B(9) of the ITAA 1936, any research and development activities carried out on behalf of the subsidiary member are not taken to be carried out on behalf of another company. Therefore, subsection 73B(9) of the ITAA 1936 does not prevent the head company from claiming a deduction under section 73B of the ITAA 1936, if the other requirements for claiming such a deduction are met.

Date of decision: 17 April 2006

Year of income: Year ending 30 June 2002

Legislative References:

Income Tax Assessment Act 1936
subsection 73B(9)

Income Tax Assessment Act 1997
section 701-1

Related Public Rulings (including Determinations)

Taxation Ruling TR 2004/11

Related ATO Interpretative Decisions

ATO ID 2006/135

ATO ID 2006/136

ATO ID 2006/138

Keywords

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