



ATO Interpretative Decision


ATO ID 2006/138

Income Tax

Research and development: consolidated group - R & D activities of two subsidiary members - only one registered

FOI status: may be released

Status of this decision: Decision Current

 **CAUTION:** This is an edited and summarised record of a Tax Office decision. This record is not published as a form of advice. It is being made available for your inspection to meet FOI requirements, because it may be used by an officer in making another decision.

This ATOID provides you with the following level of protection:

If you reasonably apply this decision in good faith to your own circumstances (which are not materially different from those described in the decision), and the decision is later found to be incorrect you will not be liable to pay any penalty or interest. However, you will be required to pay any underpaid tax (or repay any over-claimed credit, grant or benefit), provided the time limits under the law allow it. If you do intend to apply this decision to your own circumstances, you will need to ensure that the relevant provisions referred to in the decision have not been amended or repealed. You may wish to obtain further advice from the Tax Office or from a professional adviser.

Issue

Can the head company of a consolidated group claim deductions under section 73B of the *Income Tax Assessment Act 1936* (ITAA 1936) for research and development expenditure incurred by a subsidiary member where the only member of the consolidated group registered in relation to the relevant research and development activities is another subsidiary member?

Decision

Yes. The head company can claim a deduction under section 73B of the ITAA 1936 in respect of the research and development expenditure of the subsidiary member.

Facts

In the relevant income year, company A is the head company of a consolidated group for the purposes of Part 3-90 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Company B and company C are 100% controlled subsidiaries of company A and are also subsidiary members of the consolidated group in the relevant income year.

Company B and company C are eligible companies as defined in subsection 73B(1) of the ITAA 1936.

In the relevant income year, company B and company C are participants in a joint venture, the manager of which carries out eligible research and development activities (as defined under subsection 73B(1) of the ITAA 1936) on their behalf.

Apart from the operation of subsection 73B(10) of the ITAA 1936, the expenditure on these activities otherwise meets the relevant requirements for related amounts to be allowable as deductions under section 73B of the ITAA 1936.

Only company B is registered with the Industry Research and Development Board under section 39J of the *Industry Research and Development Act 1986* (IR&D Act), in relation to the joint venture research and development activities in the relevant income year.

The joint venture research and development activities registered under section 39J of the IR&D Act by company B are the same activities on which company C incurred its expenditure.

Reasons for Decision

For deductions to be allowable under section 73B of the ITAA 1936, a number of eligibility requirements must be satisfied. These eligibility requirements include that the company is an 'eligible company' and that 'research and development activities' are undertaken and registered with the IR&D Board in accordance with section 39J of the IR&D Act (see subsection 73B(10) of the ITAA 1936). The terms 'eligible company' and 'research and development activities' are defined in subsection 73B(1) of the ITAA 1936. The company must also incur expenditure that is deductible under section 73B of the ITAA 1936 and meet any associated eligibility requirements for that expenditure.

It is necessary to consider whether the head company is considered to be an eligible company that is registered for the research and development activities undertaken by company C, as the expenditure meets all other relevant requirements for related amounts to be allowable as deductions under section 73B of the ITAA 1936.

Section 73BAB of the ITAA 1936 provides that sections 73B to 73Z of the ITAA 1936 apply to the head company of a consolidated group as if it were an eligible company and were registered under section 39J of the IR&D Act in relation to particular activities during any period that a subsidiary member of the group is an eligible company and is registered for those activities in respect of that year of income.

It is important to note that section 73BAB of the ITAA 1936 uses the words 'a subsidiary member'. Further, the wording of the provision also indicates that 'a subsidiary member' must meet both requirements: it must be both an eligible company; and registered under section 39J of the IR&D Act in relation to the research and development activities, for the head company to be taken to meet those requirements for the purposes of section 73B of the ITAA 1936. Although company C is an eligible company, it is not registered for the research and development activities in question.

The Macquarie Dictionary (5th Edition) definitions of 'a' include: some; another; one; any. As section 73BAB of the ITAA 1936 uses the words 'a subsidiary member', the head company can consider if any, or another subsidiary member, is an eligible company that is registered under section 39J of the IR&D Act in relation to the same joint venture research and development activities on which company C incurred its research and development expenditure. Company B (another joint venture participant and a member of the consolidated group) is an eligible company that is registered under section 39J of the IR&D Act in respect of the same joint venture research and development activities.

Therefore, section 73BAB of the ITAA 1936 applies to the head company as if it is an eligible company that is registered for the joint venture activities under section 39J of the IR&D Act, as these requirements are met by its subsidiary member company B. The expenditure on these activities otherwise meets the relevant requirements for the amounts to be allowable as deductions under section 73B of the ITAA 1936.

Therefore in the relevant period, company A (the head company) can deduct under section 73B of the ITAA 1936 expenditure incurred on research and development activities by company C.

Note: Section 73BAB of the ITAA 1936 depends on there being a subsidiary member of the consolidated group or MEC group which is both an eligible company (as defined), and which is registered under section 39J of the IR&D Act (which applies to an eligible company only 'in relation to its research and development activities'. Therefore, a registered subsidiary member in this context is one registered in relation to research and development activities carried on by, or on behalf of, this subsidiary member.

Date of decision: 10 April 2006

Year of income: Year ending 30 June 2002

Legislative References:*Income Tax Assessment Act 1936*

section 73B

section 73BAB

Income Tax Assessment Act 1997

section 701-1

Industry Research and Development Act 1986

section 39J

Related Public Rulings (including Determinations)

Taxation Ruling TR 2004/11

Related ATO Interpretative Decisions

ATO ID 2006/135

ATO ID 2006/136

ATO ID 2006/137

Keywords

Australian Taxation Office

Consolidation

Consolidation - tax liabilities

Deductions & expenses

Eligible research and development expenditure

Innovation segment

LB & I segments

Research & development expenses

Single entity rule

Date of publication: 26 May 2006**ISSN:** 1445-2782

Copyright notice

© Australian Taxation Office for the Commonwealth of Australia

You are free to copy, adapt, modify, transmit and distribute material on this website as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).
