Australian Government
Australian Taxation Office

ATO Interpretative Decision

ATO ID 2010/192

Income Tax

Deductions: land tax arrears
FOI status: may be released

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Issue

Are arrears of land tax deductible under section 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) in the year in which they are paid?

Decision

No. Arrears of land tax are not deductible in the income year in which the arrears are paid but in the respective income years in which the liability for the land tax was incurred.

Facts

The taxpayer owned land which was used as an income-producing asset. Through lack of awareness, the taxpayer failed for a number of years to lodge land tax returns in respect of the land as required by the relevant state legislation.

Under the relevant state legislation, the taxpayer incurred at the start of the calendar year a liability to pay land tax for land owned by the taxpayer at midnight on the 31 December of the previous year. The taxpayer's liability for land tax did not rely on the lodgment of a land tax return or on the taxing authority issuing a land tax assessment.

The state land tax office became aware of the taxpayer's omission and assessed the taxpayer for land tax and unpaid arrears for all prior years.

The taxpayer paid the arrears in the current income year.

The taxpayer does not carry on a business and uses a cash basis of accounting for income tax purposes.

Reasons for Decision

A loss or outgoing incurred in gaining or producing assessable income is deductible under section 8-1 of the ITAA 1997 in the income year in which the loss or outgoing is incurred.

Taxation Ruling TR 97/7 summarises various propositions of the Courts about when a loss or outgoing is 'incurred' for the purposes of section 8-1 of the ITAA 1997. The ruling states (at paragraph 5), 'As a broad guide, you incur an outgoing at the time you owe a present money debt that you cannot escape.' The Courts have described this in various ways: as having a 'presently existing liability'; as being 'definitively committed' or 'completely subjected' to the outgoing in spite of the fact that it remains unpaid. Another requirement is that the amount of the liability is ascertained or reasonably capable of estimation. Deductibility under section 8-1 also depends on the outgoing being 'properly referable' to the income year in which the deduction is sought (*Coles Myer Finance Pty Ltd v. Federal Commissioner of Taxation* (1993) 176 CLR 640; 93 ATC 4214 at 4222; (1993) 25 ATR 95 at 105).

Taxation Ruling TR97/7 states (at paragraphs 8 and 9) that although these principles derive from cases where taxpayers operated on an earnings basis, the Courts have not generally sought to limit the meaning of the word 'incurred' by reference to the nature of a taxpayer's accounting system. Therefore, a taxpayer who uses a cash receipts based accounting system need not necessarily have paid or borne a loss or outgoing in order for that loss or outgoing to have been 'incurred' for the purposes of section 8-1 of the ITAA 1997,

In the present circumstances, the taxpayer incurred a liability to pay land tax under the provisions of the state legislation at the start of each calendar year for which the land tax was payable. The taxpayer was 'definitively committed' or 'completely subjected' to the debt at that time, even though unaware of it. As the liability to pay land tax was ascertainable in the year to which the assessment giving rise to the liability relates, land tax payable was incurred in that year (15 CTBR (NS) *Case 67 Case B5* 70 ATC 24;). The Federal Court confirmed this principle, in the context of payroll tax, in *Layala Enterprises Pty Ltd (in liq) v. Federal Commissioner of Taxation* (1998) 86 FCR 348; 98 ATC 4858; (1998) 39 ATR 502.

In these circumstances, the taxpayer incurred the land tax expenses for the purposes of section 8-1 of the ITAA 1997 in each income year for which each land tax liability was payable, and not in the income year in which the arrears were paid.

Any penalty component is not deductible by virtue of section 26-5 of the ITAA 1997.

Amendment History

Date of Amendment	Part	Comment
3 July 2015	Reasons for Decision Case References	Updated citation.

Date of decision: 3 July 2001

Year of income: Year ended 30 June 2002

Legislative References:

Income Tax Assessment Act 1936

section 170

Income Tax Assessment Act 1997

section 8-1
section 26-5

Case References:

Layala Enterprises Pty Ltd (in liq) v Federal Commissioner of Taxation

(1998) 86 FCR 348

98 ATC 4858

39 ATR 502

Case B5

70 ATC 24
15 CTBR (NS) Case 67

Related Public Rulings (including Determinations)

Taxation Ruling TR 97/7

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Rental expenses

Rental property

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