


TR 92/2A1 - Addendum - Income tax: scientific research - the application of section 73A

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Addendum

Taxation Ruling

Income tax: scientific research – the application of section 73A

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends TR 92/2 to address changes to who may approve any university, college, institute, association or organisation in writing for the purposes of section 73A of the *Income Tax Assessment Act 1936* and make miscellaneous editorial updates.

TR 92/2 is amended as follows:

1. Preamble

Omit the wording of the Preamble; substitute:

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

2. Paragraphs 1 to 3

Omit the page status 'FOI status: may be released'; substitute 'Status: **legally binding**'.

3. Paragraph 1

After paragraph 1, insert new paragraph 1A:

1A. All legislative references in this Ruling are to the *Income Tax Assessment Act 1936*, unless otherwise indicated.

4. Paragraphs 4 to 26

Omit the page status 'FOI status: may be released'; substitute 'Status: **not legally binding**'.

5. Paragraph 4

Omit '(such as section 51)'.

6. Paragraph 6

Omit '**two** parts- payments'; substitute '**two** parts – payments'.

7. Paragraph 10

Omit the wording of the paragraph; substitute:

Gifts made to approved research institutes that are endorsed as deductible gift recipients for the purposes of scientific research in the field of natural or applied science would generally be deductible under Division 30 of the *Income Tax Assessment Act 1997*.

8. Paragraph 11

(a) After 'is an approved research', omit 'organisation'; substitute 'institute'.

(b) Omit the 3rd sentence; substitute:

Bodies may be approved by the CSIRO, the Chief Executive Officer of the National Health and Medical Research Council and the Secretary of the Department administered by the Minister administering the *Australian Research Council Act 2001* (as at November 2024, the Secretary of the Department of Education).

9. Paragraph 16

Omit 'For these reasons,we'; substitute 'For these reasons, we'.

10. Paragraph 17

After 'mischievous rule as approved in', omit '*Federated Engine Drivers and Firemen's Association of Australia v The Broken Hill Proprietary Co Ltd* (1911)'; substitute:

Federated Engine-Drivers and Firemen's Association of Australasia Claimants; and Broken Hill Proprietary Company Limited [1911] HCA 31;

11. Paragraph 18

Omit the wording of the paragraph; substitute:

The golden rule, as approved in *Australian Boot Trade Employees' Federation Claimants; and Whybrow and Co* [1910] HCA 53, provides that where there is an absurdity and inconsistency in an Act, the Court will take into account the consequences of a particular interpretation and where two possible interpretations are open, one reasonable and one absurd, the court will choose the former.

See also *Ingham v Hie Lee* [1912] HCA 66.

12. Paragraph 19

Omit the wording of the paragraph; substitute:

Section 15AA of the *Acts Interpretation Act 1901* states that:

In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.

13. Paragraph 23

After 'related to the business of the', omit 'taxpayer'(emphasis added)'; substitute 'taxpayer' (emphasis added)'.

14. Paragraph 24

After 'However, in the', omit 'Commonwealth Taxation Board of Review,'; substitute 'Commonwealth Taxation Board of Review'.

15. Paragraph 25

Omit the wording of the paragraph; substitute:

In the case of *Goodman Fielder Wattie Ltd v Commissioner of Taxation* [1991] FCA 264 at 36, Hill J stated, *obiter* (emphasis added):

'...The evident purpose of s.73A was to grant a concession to taxpayers in cases where expenditure was not otherwise deductible, for example, if it was of a capital nature. To qualify, the expenditure must be for scientific research, whether that expenditure is made to an approved research institute (s.73A(1)(a)) or is expenditure incurred by the taxpayer itself on scientific research.'

That is, Hill J regarded paragraph 73A(1)(b) as relating to expenditure incurred by the taxpayer **itself** on scientific research. By inference, payments to approved research institutes are therefore not regarded by Hill J as expenditure incurred by the taxpayer itself on scientific research. It follows therefore that payments to non-approved research institutes are also not expenditure incurred by the taxpayer itself on scientific research and hence not deductible under paragraph 73A(1)(b).

16. Paragraph 26

After 'see paragraph 16', insert 'of this Ruling'.

This Addendum applies both before and after its date of issue.

Commissioner of Taxation
13 November 2024

ATO references

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