


TD 95/D16 - Income tax: are registered clubs, hotels, casinos and other gaming machine operators entitled to a deduction under subsection 51(1) of the Income Tax Assessment Act 1936 for accumulated jackpot amounts displayed on gaming machines prior to a player winning the jackpot?

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This document has been finalised by TD 95/12.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: are registered clubs, hotels, casinos and other gaming machine operators entitled to a deduction under subsection 51(1) of the *Income Tax Assessment Act 1936* for accumulated jackpot amounts displayed on gaming machines prior to a player winning the jackpot?

Note: This Draft Taxation Determination (TD) relates to clubs that are **not** exempt from income tax.

1. No. A gaming machine operator is not entitled to a deduction under subsection 51(1) prior to a player winning the jackpot.
2. There is no presently existing liability to pay a jackpot until a player wins the jackpot. Payment is contingent upon a player winning the jackpot. It makes no difference that a governing body requires an operator to set aside, or obtain a bank guarantee for, an amount equivalent to the jackpot. The gaming machine operator has not incurred expenditure equivalent to the amount of the jackpot accumulated on gaming machines under subsection 51(1) until the player wins the jackpot (see *Nilsen Development Laboratories Pty Ltd v. FC of T* (1981) 144 CLR 616; 81 ATC 4031, (1981) 11 ATR 505).

Examples:

(a) Club A Ltd is a registered club in New South Wales and has a tax year ending 30 June. The club has a separate bank account in which it sets aside amounts for Linked Progressive Jackpots, according to the Liquor Administration Board's regulations. On 31 March 1994, Club A paid \$10,000 into the account. As at the year ended 30 June 1994, the club had set aside a total amount of \$24,750. This amount represents the jackpot the club would have to pay if a player won the jackpot on that date. No player has won the jackpot as at the close of business on 30 June 1994.

The club is not entitled to a deduction either as at 31 March 1994 or at year end because a player has not won the jackpot.

(b) Casino B Pty Ltd has a tax year ending 30 April. Just before closing time on 30 April 1996, a player won a jackpot of \$8,452 on one of the casino's Cashcade systems. The casino paid the player by cheque on 3 May 1996.

The casino is entitled to a deduction in the year ended 30 April 1996 because the casino incurred the expenditure when the player won the jackpot.

(c) Hotel C Pty Ltd has a tax year ending 30 June. As at the year ended 30 June 1995, the jackpots displayed on the hotel's four Stand Alone Progressive gaming machines totalled \$6,119. No player has won a jackpot as at the close of business on 30 June 1995.

The hotel is not entitled to a deduction in the year ended 30 June 1995 because a player has not won a jackpot.

Commissioner of Taxation

20/09/95

FOI INDEX DETAIL: Reference No.

Previously issued as Draft TD 93/222

Related Determinations:

Related Rulings:

Subject Ref: allowable deductions; accrued expenses; accumulation fund; clubs; deductibility; gaming; incurred

Legislative Ref: ITAA 51(1)

Case Ref: Nilsen Development Laboratories Pty Ltd v. F C of T (1981) 144 CLR 616; 81 ATC 4031; (1981) 11 ATR 505

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