



***TD 93/91 - Income tax: for a balance day adjustment to be deductible under subsection 51(1) of the Income Tax Assessment Act 1936, is it sufficient for it to be a contingent liability?***


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 This document has changed over time. This is a consolidated version of the ruling which was published on *20 May 1993*

## Taxation Determination

TD 93/91

**Income tax: for a balance day adjustment to be deductible under subsection 51(1) of the *Income Tax Assessment Act 1936*, is it sufficient for it to be a contingent liability?**

 This document has been [Withdrawn](#)

FOI status: may be released

### REFER TO Notice of Withdrawal - 9th DECEMBER 1993

1. No. A deduction is not allowable for a balance day adjustment in respect of a contingent liability.
2. In the context of this determination:
  - a) A balance day adjustment refers to an adjustment made in the accounts of a taxpayer returning income on an accruals basis;
  - b) A contingent liability is a loss that has not crystallised nor "come home" to the taxpayer at balance date. It is no more than impending, threatened or expected at the end of the financial year.
3. No deduction is allowable under section 51(1) unless the expense has been "incurred" prior to the end of the financial year.
4. The meaning of "incurred" is discussed in *FC of T v James Flood Pty Ltd* (1953) 88 CLR 492; 27 ALJ 481; 10 ATD 240; (1953) ALR 903. In *Flood's* case, the High Court decided that "a liability will be a loss or outgoing incurred within the meaning of subsection 51(1) even though it remains unpaid, provided that the taxpayer has completely subjected itself to the liability".
5. In *Nilsen Development Laboratories & Ors v FC of T*, (1981) 144 CLR 616; 81 ATC 4031; 11 ATR 505; 55 ALJR 97, Barwick CJ refers to previous decisions in *New Zealand Flax Investments Ltd v FC of T* (1938) 61 CLR 179; 12 ALJ 313; and *Emu Bay Railway Co. Ltd v FC of T* (1944) 71 CLR 596. His Honour goes on to say "That part of Sir Owen Dixon's statement in *New Zealand Flax Investments Ltd v FC of T* which presently needs emphasis is that the word 'incurred' in section 51(1) 'does not include a loss or outgoing which is no more than pending, threatened or expected': and I would for myself add 'no matter how certain it is in the year of income that that loss or expenditure will occur in the future'."
6. Court decisions in *Commonwealth Aluminium Corp. Ltd v FC of T* (1977) 32 FLR 210; 7 ATR 376; 77ATC 4151, *FC of T v Lau*, 84 ATC 4929; (1984) 16 ATR 55 and *Ogilvy and Mather Pty Ltd v FC of T*, 90 ATC 4836;(1990) 95 ALR 663; 21ATR 841 confirm this view.

#### **Examples:**

1. A taxpayer engages a solicitor to provide legal advice. He expects to receive a bill for legal expenses after the end of the financial year. He estimates that the legal fees payable will be

*in the order of \$20,000. At the end of the financial year he accrues legal expenses of \$20,000 in his accounts. No legal services were provided during the financial year.*

*No deduction is allowable for the estimated legal fees payable in the year of income.*

*2. A taxpayer derives assessable income from the hire of machinery. One of his machines breaks down during the financial year. He estimates the cost of repairs based on quotations obtained at \$10,000. He accrues an expense for this amount in his accounts at the end of the financial year although no work is performed on repairing the machine during the financial year.*

*No deduction is allowable for the accrued amount.*

*3. A taxpayer engages a plumber to repair a broken water pipe in his factory. The plumber completes the work during the financial year but does not bill the taxpayer until after the end of the financial year. The taxpayer estimates that the cost of the repair will be \$1,000. He accrues this amount as an expense at the end of the financial year.*

*No deduction would be allowable for the expense accrual in the year of income.*

## **Commissioner of Taxation**

20/5/93

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### **References**

**ATO references:**  
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### **Related Rulings/Determinations:**

TD 93/91 Notice of Withdrawal  
TD 93/188  
IT 2625

### **Subject References:**

deductions;  
balance day adjustments;  
contingent liabilities;  
accrued expenses.

### **Legislative References:**

ITAA 51(1)

### **Case References:**

*FC of T v. James Flood Pty Ltd*  
(1953) 88 CLR 492  
27 ALJ 481  
10 ATD 240  
(1953) ALR 903

*Commonwealth Aluminium Corp. Ltd v. FC of T*  
(1977) 32 FLR 210  
7 ATR 376  
77ATC 4151

*Nilsen Development Laboratories Pty Limited v. FC of T*  
(1981) 144 CLR 616  
81 ATC 4031  
11 ATR 505  
55 ALJR 97

*FC of T v. Lau*  
84 ATC 4929  
(1984) 16 ATR 55

*Ogilvy and Mather Pty Ltd v. FC of T*  
90 ATC 4836  
95 ALR 663  
21ATR 841

*New Zealand Flax Investments Ltd v. FC of T*  
(1938) 61 CLR 179  
12 ALJ 313

*Emu Bay Railway Co.Ltd v. FCof T*  
(1944) 71 CLR 596