

General Deductions

s.8-1 ITAA 1997 General Deductions

- (1) You can deduct any loss or outgoing **to the extent that (apportion)**
 - (a) it is incurred in gaining or producing your assessable income; OR
 - (b) it is incurred in carrying on a business for the purpose of gaining or producing your assessable income
 - **Have to link the loss to your assessable income or carrying on the business (Nexus)**
- (2) However, you cannot deduct a loss or outgoing to the extent that
 - (a) it is of a capital nature; OR
 - (b) it is of a private or domestic nature; OR
 - (c) it is incurred in relation to gaining or producing your *exempt income or your *NANE income; OR
 - (d) a provision of this Act prevents you from deducting it

s.8-10 Most Appropriate Section

- Expense should be deducted under most appropriate section
- Generally the specific deduction provision should be applied over the general rule

FCT v Total Holdings

- Total got loan from parent company which had interest
- Total gave part of that loan to its subsidiary interest-free
- Total claimed that interest expenses were deductible
- Ruling
 - Deductible
 - Liability of interest with a purpose of furthering present or prospective income is deductible
 - Loans were designed to make the subsidiary profitable as soon as possible and pay Total in interest and dividends

Tax Payments

- s.8-1 Tax payments incurred outside of ITAA 1936 and ITAA 1997 are deductible

Wrongdoings

Loss by Theft - Charles Moore's case

- Employee had to walk the bank
- Got robbed in the process
- Held: Deductible
 - Was in the course of business and there is a nexus

s.25-45 ITAA 1997 Loss by theft by employee

- Can deduct a loss if
 - (a) discovered in the current year
 - (b) loss was caused by theft, stealing, embezzlement ... by an employee
 - (c) money was included in your assessable income for the current year or an earlier year

Penalties and Fines

- Deductible
 - *Magna Alloys*
 - Expenses to protect company's ability to carry on business = sufficient nexus
 - Legal expenses were incurred to protect reputation of business
 - *Herald and Weekly times v FCT*
 - Legal expenses incurred in the processing of carrying on a business = deductible
 - Libel claims are regular and unavoidable in publishing industry
 - Sufficient nexus between expense and business
 - *FCT v Snowden (1958)*
 - Company subject to complaints and investigations
 - Expenses on advertising and legal fees in defending reputation
 - Concluded that expenses were deductible since expenses were incurred in defending the taxpayer's reputation and enabling continued operation of the business to gain or produce assessable income
- Non-deductible
 - s.26-5(1) Penalties payable under an Australia law or foreign law = non-deductible
 - s.26-54 Illegal proceeds punishable by imprisonment ≥ 1 year = non-deductible
 - s.110-38 Illegal proceeds are excluded from cost base and reduced cost base
 - **s.8-1(2)(a)** Loss or outgoing that is capital is not deductible

Nexus - Too Soon - Business Income

- Expenses incurred in gaining employment = Not deductible *FCT v Maddalena (1971)*
- Expenses incurred in gaining employment where the taxpayer is carrying on a business and the employment contract contributes towards the production of business income = Deductible *Spriggs v FCT; Riddell v FCT [2009]*

FCT v Maddalena (1971)

- Taxpayer was a rugby player
- Incurred travel and legal expenses about whether to change rugby clubs
- Held:
 - Expenses not deductible
 - Expenses were not connected with taxpayer's production of assessable income
 - Expenses were putting the taxpayer in a position to produce assessable income but not actually producing assessable income

Spriggs v FCT; Riddell v FCT [2009]

- Taxpayers were professional football players
- Incurred management fees and claimed deductions for those fees
- Held:
 - Deductible
 - Employment contracts include promotional activities and therefore, are related to the production of the taxpayer's business income