

ALERT

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DEDUCTIONS FOR COMMERCIAL WEBSITE EXPENSES Taxation Ruling TR 2016/3

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The Commissioner of Taxation (**Commissioner**) sets out his views on the deductibility of expenditure incurred in acquiring, developing, maintaining or modifying a website for use in carrying on a business, including expenditure relating to domain names in Taxation Ruling TR 2016/3. TR 2016/3 applies to income years both before and after 14 December 2016.

In the Commissioner's view a website is an intangible asset consisting of software and includes software integrated into the website for online use by a website user. It does not, however, include software provided on the website for installation on the user's device, such as software sold to third-parties. Computer hardware, the right to use the domain name and content available on or incorporated into a website that has independent value to the business and that can be separately identified and are not considered by the Commissioner to be part of a commercial website.

Capital v Revenue

TR 2016/3 highlights the importance of the general capital/ revenue distinction and the need to determine if the cost is a "recurrent" operational expense or "referable to the enhancement of the profit yielding structure of the business", the former being deductible and the latter being capital in nature and not deductible.

The deductibility of expenditure on a commercial website under section 8-1 of the *Income Tax Assessment Act 1997* (**section 8-1** and **ITAA 97**) depends on whether the expenditure is of a capital or revenue nature.

The Commissioner considers that expenditure not deductible under section 8-1 (or any other provision outside Division 40 (capital allowances) and Division 328 (small business entities)) may be "in-house software" and deductible under the capital allowances regime. "In-house software" is defined in section 995-1(1) ITAA 97 as computer software (or a right to use computer software), that a taxpayer acquires, develops or commissions and that is "mainly" for the "taxpayer" to use in performing the functions for which the software was developed (i.e. not mainly for sale). TR 2016/3 provides that where expenditure is incurred on "in-house software" that expenditure may be deducted over five years from the time that the software is first used or installed ready for use. To the extent that the expenditure is incurred on developing computer software, the expenditure might be allocated to a software development pool and deducted in accordance with the pool rules in section 40-455 ITAA 97. Small business entities using the simplified depreciation rules in Subdivision 328-D might be able to write off the expenditure less than \$20,000 in value immediately, otherwise the expenditure can be deducted in accordance with the general small business pool rules.

Whether expenditure is deductible depends on the facts and circumstances in which it is incurred. The Commissioner sets out a number of examples in the ruling illustrating his views as to the application of the capital/ revenue distinction and to assist taxpayers with their decision making process.

Expenditure which the Commissioner considers to be common in relation to commercial websites includes:

- labour, including contractor and employee costs: The Commissioner considers that being of a recurrent nature these are ordinarily deductible. However, there are circumstances in which they could be capital in nature, such as, for example, where the website (or related project) is intended to provide a long-term benefit and of a capital nature and the labour costs are allocated to that project and form part of its cost

base.

- expenditure on “off the shelf” software products: In the Commissioner’s view expenditure on off- the-shelf software that is licensed periodically is a revenue expense; whilst expenditure that is capital in nature may be depreciable under Division 40 if the “off the shelf” product constitutes “in-house software”; and
- periodic usage, registration or licensing fees: In the Commissioner’s view these are revenue expenses and deductible over the period to which the expense relates. For example, in the Commissioner’s view where a commercial website is leased from a web developer, the periodic lease payments made are deductible as incurred, provided the business does not also have a right to become the owner of the website.

In TR20016/3 the Commissioner considers particular categories of expenditure such as acquiring or developing a commercial website, the maintenance or modification of a commercial website, content migration, social media expenditure, domain names and copyright and when in his view the expenditure is deductible or comprises part of the cost base of a CGT asset.

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