

TAXATION RULING NO. IT 5

PROPERTY INVESTMENT TRUST EXPENDITURE - INTEREST
PAYABLE AND SERVICE FEE

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I 1100769 PROPERTY INVESTMENT TRUSTS 51(1)
INTEREST PAYMENTS
SERVICE FEES

PREAMBLE A taxpayer contemplating investing money in property investment trusts sought advice as to whether the following outgoings would qualify for deduction under the provisions of S51(1):-

- (a) service fee (7%) payable in advance, when purchasing units in (a) and (b) the service fee being specifically for information services to be rendered to the taxpayer during the life of the Trust and the Fund; and
- (b) interest (17%) payable by (the taxpayer) on a loan from in respect of the loan portion of a geared investment in (Depending upon the proportion of the investment representing borrowed funds, the interest payable could exceed the income from the investment.)

RULING 2. Although the amount of interest payable under the loan contract is materially in excess of any assessable income arising from the investment, it is accepted that the full interest charge would qualify as an allowable deduction in terms of section 51(1) of the Income Tax Assessment Act.

3. In the taxpayer's situation, it is possible to distinguish the decision in Ure v FC of T, 80 ATC 4264; 10 ATR 908, which involved a complex series of loan transactions. The situations discussed in 25 CTBR (NS) Case 27; 81 ATC Case N73 and 24 CTBR (NS) Case 62; 80 ATC Case M87, where expenditure of maintaining a house exceeded the small rental received, are considered to be more akin to the taxpayer's circumstances. In both cases, the Boards of Review saw fit to distinguish Ure's Case and allowed a deduction to the extent of the outgoing incurred. The decision in two earlier cases, Re Land and Income Taxation Act 1910 (Court of Review Decision, Volume 2, p.349) and Re a Taxpayer (NSW) (No.1) 2 ATD 210, are also relevant.

4. Essentially, the deductibility of interest depends upon the manner in which the borrowed moneys were applied and, income

tax being an annual impost, any decision concerning a possible deduction must be made each year. Accordingly, the taxpayer was advised, subject to the usual reservation, that a deduction for the interest paid under the contract would be an allowable deduction in each year of income.

5. The service fee, on the other hand, paid when the taxpayer purchases units in either the _____ is not an allowable deduction. This expense is seen to be clearly of a capital nature, being incurred as part of the purchase price of units in the particular Trust. In addition, it is not seen to be an expense incurred in the management, by the taxpayer himself, of his investment portfolio. In the _____ situation, management lies with the promoters of the fund, not the unitholders.

COMMISSIONER OF TAXATION