TAXATION RULING NO. IT 39

EXPENDITURE INCURRED IN SERVICING OR MANAGING INCOME PRODUCING INVESTMENTS - APPLICATION OF SECTION 51(1)

F.O.I. EMBARGO: May be released

REF N.O. REF: 80/5916 F38 DATE OF EFFECT:

B.O. REF: DATE ORIG. MEMO ISSUED: 08.04.80

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1100522	BUSINESS CARRYING ON INVESTMENT ACTIVITIES	51(1)

FACTS As a result of a request for reference to Board of Review, consideration was given to the question of the application of section 51(1) where expenditure has been incurred in "servicing" an investment portfolio (consulting with inter-state stock brokers and attending interstate stock exchange, etc).

2. The arguments proposed in defence of the assessments in dispute were that, on the facts of the case, such expenditure was not incurred in carrying on a business in relation to the taxpayer's investment activities and that, in any case, the expenditure was of a capital nature.

RULING 3. In relation to the first of these arguments it was considered the taxpayer was not carrying on any business in connection with his investment activities and that any profit arising from a turnover of the investments would not be assessable income (unless caught by section 26AAA). However, it was not considered that this had much relevance to the question to be decided. As the Full High Court said in FC of T v Green (1950) 81CLR 313: "Section 51, it should be observed, is not limited to deductions from income derived as being the proceeds of a business.

4. There can be no doubt that the expenditure in question was relevant to the gaining of the dividend and interest income from the taxpayer's investments: the real question therefore was how the expenditure should be characterised. It was appreciated that the expenditure could be viewed as possessing the character of a capital outlay (relating to the protection and reorganisation of investments of capital) and that such a view was supported by the decision of the Board of Review in 9 CTBR (OS) Case 26. However, that decision was delivered as long ago as 1939 and, of course, preceded the decision in Green's case (supra) and other leading court decisions dealing with section 51(1).

5. The decision in Case 26 and some other Board decisions prior to Green's case must now be of doubtful value in the present state of the law regarding section 51(1). Although the relevant part of Green's case was concerned with travelling expenses incurred to inspect and supervise investments in rented properties, the decision that such expenses were deductible was bases on the broad proposition that they were incurred "in relation to the management of the income producing enterprises of taxpayer". In the light of this, it was decided that expenditure of the kind in issue here should be treated, in principle, as a deductible outgoing. It should properly be regarded as incurred in relation to the management of income producing investments and thus as having an intrinsically revenue character.

COMMISSIONER OF TAXATION