IT 131 - Division 10B - research and preparation expenses of authors

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TAXATION RULING NO. IT 131

DIV 10B - RESEARCH AND PREPARATION EXPENSES OF AUTHORS

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PREAMBLE Consideration was given to the treatment accorded expenses incurred by authors in researching, preparing and bringing their work to the publication stage.

2. This matter was briefly dealt with in CITCM 749. Since the issue of that instruction there has been a relaxation of the interpretation of section 51 of the Act following decisions by the Courts and Boards of Review. It is in the light of these decisions that expenditure of the abovementioned nature must now be considered.

3. The intention behind the insertion of Division 10B in the Assessment Act was to provide a concession for which the law in force at the time was thought to make no provision. the view then taken was that capital costs incurred by an inventor or author in the creation of an original work could not be written off in the same manner as depreciable plant because patents, designs and copyrights were not plant or articles for the purposes of section 54. For much the same reason, it was considered that the purchaser of such an asset could not write off the cost over its effective life or over any other period.

4. Division 10B was enacted in 1956 and in those days the approach to the allowance of deductions under section 51 was much narrower than it is today. This approach has had to be broadened following a series of High Court decisions in the Finn, Charles Moore & Co. Ltd and Snowden & willson Pty Ltd cases. The view taken in 1956 was that an outgoing could not qualify for deduction under section 51 even if the advantage obtained was transitory. What was looked at was that a capital asset, the copyright, had been produced. In practice, it was convenient to regard the outgoing as expenditure of a capital nature in order to give the taxpayer the benefit of deductions under Division 10B.

RULING 5. Having regard to the current interpretation applied to section 51, it is not possible to regard Division 10B as providing an exclusive code relating to expenses associated with

the creation of a work in which copyright will subsist. Neither can we follow an arbitrary rule of classifying authors as either "professional" or "part time". The issue in each case must be decided in the light of its own particular facts.

6. In the case of university lecturers an the like, the writing of books in the taxpayer's specialised field is often just as much a part of his career as the duties for which he is paid a salary. Expenses incurred in the writting of books in this situation are incidental to the totality of the income producing activities carried on and, it is considered that the character of the expenditure does not necessarily change from revenue to capital simply because the taxpayer enjoys the protection of copyright. At the same time, it is not suggested that all outgoings incurred by a taxpayer in this category are automatically of a revenue nature. Some could be an affair of capital or partly of a private nature as, e.g., where an overseas trip is undertaken partly for business purposes and partly for holidaying.

7. Each case must, of course, be considered on its own merits. As a general guideline, however, where claims are made by an another for expenses incurred in producing a work which is associated with his day occupation e.g., a university lecturer producing a text book or a political commentator writting on current political subjects, expenses will generally qualify for deduction under section 51. In any case, where the expenditure is relatively small, any doubts should be resolved in the taxpayer's favour. In these instances the copyright may be regarded as an "incident" rather than the "product" of the taxpayer's activities.

COMMISSIONER OF TAXATION