IT 181 - Expenses incurred by overseas theatrical artists on accommodation and meals while visiting Australia

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TAXATION RULING NO. IT 181

EXPENSES INCURRED BY OVERSEAS THEATRICAL ARTISTS ON ACCOMMODATION AND MEALS WHILE VISITING AUSTRALIA

F.O.I. EMBARGO: May be released

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I 1102143	TRAVELLING EXPENSES LIVING EXPENSES THEATRICAL ARTISTS OVERSEAS ARTISTS ENTERTAINERS	51(1)

OTHER RULINGS ON TOPIC CITCM 720

PREAMBLE In CITCM 720, a direction was given that, where the terms of the contract or the conditions of employment of a theatrical artist make it necessary for him to live away from his permanent headquarters, hotel and accommodation expenses would qualify for deduction under section 51(1), irrespective of whether the artist was carrying on a business or was in receipt of a salary.

2. It was indicated in paragraph 4 of the CITCM that the permanent headquarters of an overseas artist would be outside Australia. However, subsequent developments have revealed that this will not invariably be so. In a series of cases now reported as 13 TBRD Cases N13, N16, N19 and N20; 10 CTBR(NS) Cases 98 and 99, Cases N19 and N20 not reported but mentioned at 10 CTBR(NS) p.XV, the Boards of Review upheld the disallowance of deductions claimed in respect of costs of accommodation and meals by overseas artists engaged in long-run theatrical productions.

3. In each of these cases, the taxpayer concerned had been in Australia for a period in excess of two years and the Board of Review found as a fact that the taxpayer had not maintained a permanent headquarters from which he was temporarily absent. In effect, it was held in each case that the taxpayer had his headquarters at the place at which he was currently employed and that the expenses in respect of which deductions were claimed were not travelling expenses but private living expenses, and therefore non-deductible. The earlier cases, in which theatrical artists had been allowed deductions for hotel expenses 1 TBRD Case 81; 1CTBR(NS) Case 53 and 5 TBRD Case E34; 4 CTBR(NS) Case 99, were expressly distinguished on the ground that, in each of those cases, the taxpayer concerned maintainedd a domestic establishment in a particular place while on tour elsewhere.

4. It was subsequently advised that CITCM No.720 should not be regarded as requiring the allowance of deductions for the cost of accommodation and meals in cases such as those now reported in Volume 13, and that the test to be applied in determining claims for deductions in respect of meals and accommodation was not whether the taxpayer was a 'non-resident' but whether 'extra expense' was involved, in the sense that continuing costs would be incurred by the artist in maintaining at the same time, his usual place of residence or headquarters elsewhere.

RULING

5. In later negotiations with an agent for overseas theatrical artists in relation to the deductions to be allowed in certain cases, it was found that this ruling still left areas of uncertainty. In order to overcome the claims, advice was given to the agent concerned in the following terms -

> "It might be explained at the outset that, where an entertainer visiting Australia has a permanent headquarters abroad, there is no change in the administrative ruling that the full cost of his accommodation and meals while in Australia is allowable as a deduction. In such a case the cost of accommodation and meals is accepted as being "extra expense" in the sense used by the Board of Review. The distinction, broadly, is between those costs which, having regard to the entertainer's normal mode of living, may properly be described as travelling expenses and those which are more correctly described as living expenses. As a general rule, the test of permanent headquarters is satisfied if the entertainer maintains a bona fide domestic establishment abroad.

After conceding that the application of this principle could involve difficulties in borderline cases the advice continued -

> "As a practical expedient, I have decided to limit the area of uncertainty by adopting the following rules:-
>
> (a) Where the entertainer is in Australia for six months or less, it will be accepted as a prima facie assumption that the full cost of his accommodation and meals represents travelling expenses and, accordingly, wholly deductible. It may be stressed that only demonstrable expenses (e.g. hotel bills) will be allowable as a deduction under this rule. Where an entertainer sets up a temporary domestic establishment in Australia, the deduction to be allowed will not, without the clearest evidence in support of a higher allowance, exceed the rent actually attributable to his own accommodation (as distinct from that of other members of his family) plus meals at /10 per week.
>
> (b) Where an entertainer is in Australia for two years or more the full cost of his accommodation

and meals will, as a general rule, be regarded as private or domestic expenditure and, accordingly, wholly non-deductible. A departure from this general rule will be considered to be justified only on production of the clearest evidence that the amounts claimed may properly be regarded as travelling expenses - e.g. that the taxpayer maintains elsewhere a bona fide domestic establishment from which he is temporarily absent.

There remain the cases of entertainers whose stay in Australia is between six months and two years. In order to determine whether the taxpayer falls within category (a) or (b) above, it will be necessary for the Taxation Office to decide on the facts of each individual case whether he is incurring travelling expenses or living expenses - in short, whether or not he maintains a bona fide domestic establishment as his permanent headquarters. In each of these cases, therefore, it will be necessary to furnish to the Deputy Commissioner at least the following information:-

(a) the address and nature of the premises at which the taxpayer's usual domestic establishment is located;

(b) the length of time that those premises have been used as his usual domestic establishment;

(c) the use to which the premises are put during his absence - e.g. whether leased, vacant, in charge of caretaker, etc.;

(d) the nature and amount of rent or other consideration received by him for the use of the premises during his absence; and

(e) the place where his wife and family (if any) reside while he is on tour."

6. As indicated in the above quotations, the essential distinction is between travelling expenses (the whole of which constitutes 'extra expense' and is deductible) and living expenses. Where the cost of accommodation is conceded to be allowable, the full cost of meals also should be allowed, and not only that part of the cost representing the excess over the cost of meals at home.

7. To facilitate the handling of these cases, it has been decided that the following procedures should be adopted -

(a) Where the artist has been in Australia for six months or less and it is not expected that his total stay in Australia will exceed six months, the full cost of accommodation and meals may be allowed as a deduction.

(b) Where, at the time of assessing, it is known that the

artist has been or will be in Australia for a total period of two years of more, all claims for the cost of accommodation and meals may be disallowed, leaving him the onus of establishing - before a Board of Review, if necessary - that he has a permanent headquarters abroad.

8. Cases falling within the intermediate category - i.e., artists whose stay in Australia is between six months and two years - will require the exercise of judgment on the part of assessing officers. The particulars set out in paragraph 6 that artists or their agents should furnish will assist in determining whether or not a taxpayer maintains a permanent domestic establishment abroad. Generally speaking, where the taxpayer has let his overseas residence, he should not be regarded as maintaining a domestic establishment there, although special consideration may be necessary where the rental is merely nominal. A domestic establishment claimed to have been set up on the eve of departure for Australia would not normally be accepted as entitling the taxpayer to a deduction of travelling expenses. In all cases the onus of establishing the existence of a permanent headquarters should be placed on the taxpayer and statements by or on behalf of artists in this connection are not necessarily to be accepted without query.

9. Although it has thus been conceded that, in a case where the expenditure represents travelling expenses, the full cost of meals and accommodation should be allowed without any reduction on account of the costs that the taxpayer would have incurred if he had stayed at home, it is not intended that amounts claimed should be accepted without scrutiny. Unless there is satisfactory evidence as to quantum (e.g., in the form of hotel accounts) a reduction in the amount claimed for meals to an arbitrary amount which is reasonable in the circumstances would be warranted. (Editors note : In 1963 this was suggested to be /10 per week).

10. It will be appreciated that the above rulings in respect of theatrical artists who stay in Australia for a period exceeding six months envisage that the taxpayers are stationed in one particular place or in relatively few places. If such an artist makes a brief trip to another part of Australia from his temporary headquarters in Australia, he may be allowed travelling expenses in respect of that trip on the basis laid down for local artists in CITCM 720.

11. It is not intended that there should be any change in the establishment practices with regard to overseas artists whose occupations are of an itinerant character, and who spend no more than a few days in any one place. If reasonable in amount, deductions claimed for expenditure on meals and accommodation while travelling in this way should be allowed irrespective of the length of the taxpayer's stay in Australia.

12. These principles should be applied in all future assessments of theatrical artists.

COMMISSIONER OF TAXATION