

IT 193 - Home office expenses - professional persons

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TAXATION RULING NO. IT 193

HOME OFFICE EXPENSES - PROFESSIONAL PERSONS

F.O.I. EMBARGO: May be released

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I 1101498

HOME OFFICE EXPENSES

51(1)

BARRISTERS

FC OF T v FORSYTH

HANDLEY v FC OF T

OTHER RULINGS ON TOPIC:

IT 140, IT 191, IT 192, IT 194

PREAMBLE

The following comments are offered in respect of the judgments of the High Court of Australia in FC of T v Forsyth 81 ATC 4157, 11 ATR 657 and Handley v FC of T 81 ATC 4165, 11 ATR 644.

FACTS

2. The two cases concerned claims by barristers for certain deductions in respect of the use of part of their homes for professional purposes. In the Forsyth case deduction was claimed for sums paid by way of rent for the right to occupy a study and to use other facilities in premises used as a residence by the taxpayer and his family. In the Handley case the claim for deduction related to a proportion of the interest paid under a mortgage on the taxpayer's home and of municipal and water rates and insurance premiums in respect of the premises.

3. The High Court, by majority, held in both cases that the deductions sought were not deductible under section 51(1) and, in so deciding, confirmed the earlier decisions in Thomas v FC of T 72 ATC 4094; 3 ATR 165 and FC of T v Faichney (1972) 129 CLR 38. Wilson J, who gave the leading judgment for the majority, concluded that the relevant expenditure did not fall within the positive tests of section 51(1) and, in any event, was expenditure of a private or domestic nature expressly precluded from deduction by the terms of the section. The judgments confirm long standing practice in this area.

4. There are suggestions in some of the judgments in the Handley case that the denial of the deductions sought is inconsistent with the allowance of deductions for a proportion of costs incurred for heating and lighting in the home. However, the deductibility of costs incurred for heating and lighting was not in issue before the High Court and consequently the Court was not called upon to, nor did it, decide this question. In these circumstances it is not proposed to alter the present practices of allowing deductions for heating and

lighting.

COMMISSIONER OF TAXATION