IT 2084 - Income tax : losses & outgoings: financial institutions duty - bank account debits tax

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TAXATION RULING NO. IT 2084

INCOME TAX : LOSSES & OUTGOINGS: FINANCIAL INSTITUTIONS DUTY - BANK ACCOUNT DEBITS TAX

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1078696	LOSSES AND OUTGOINGS FINANCIAL INSTITUTIONS DUTY BANK ACCOUNT DEBITS TAX	51(1)

RULING

The States of New South Wales, Victoria, South Australia and Western Australia have each enacted legislation to impose a duty upon financial institutions. The relevant Acts are:-

New South Wales	-	Stamp Duties (Financial Institutions Duty) Admendment Act 1982
Victoria	-	Financial Institutions Duty Act 1982
South Australia	-	Financial Institutions Duty Act 1983
Western Australia	-	Financial Institutions Duty Act 1983

2. In essence the duty imposed by the various Acts is an ad valorem tax on amounts credited to or deposited in accounts maintained at a wide range of financial institutions. Although the primary liability for the duty falls upon the financial institutions it is permissible for them to pass the duty on to customers. In practice customers are charged amounts equal to the duty imposed on credits or deposits to their accounts.

3. Banking the proceeds of a business is a necessary part of the operations that are directed to the gaining or producing day-by-day of what will form at the end of the accounting period the assessable income, cf. Charles Moore & Co. (W.A.) Pty. Ltd. v. FCT (1956) 95 CLR 344. For this reason duty passed on by financial institutions to taxpayers in respect of credits or deposits to accounts used in carrying on a business qualifies as an allowable deduction under sub-section 51(1) of the Income Tax Assessment Act to the extent to which the credits and deposits represent amounts which will form part of assessable

income.

4. The reasoning of the Court in the Charles Moore case does not generally apply to other receipts of assessable income, e.g. dividends, interest, rent, salary, wages, etc. It cannot generally be said that banking is a necessary part of the operations by which assessable income is derived from other sources to the extent that it is a necessary part of business operations. At the same time, however, it is usually the case that dividends, interest and rent are paid by cheque. Salary and wages are frequently paid by cheque and in some situations they are paid direct by the employer into an employee's bank account. In these circumstances the use of a bank account is a necessary part of the derivation of assessable income, i.e. to make available to the recipient the funds represented by the cheque or direct credit to the account.

5. In Case A71, 69 ATC, 396; Case 49, 15 CTBR(NS), 319, Taxation Board of Review No. 2 unanimously held that a duty imposed by the State of Western Australia on receipts, including the receipt of salary and wages, was an ordinary and regular incident of the production of assessable income and, therefore, allowable as a deduction under sub-section 51(1). The conclusion reached by the Board is considered to apply to the passing on of Financial Institutions Duty. Where duty is passed on by financial institutions to taxpayers in respect of credits or deposits of cheques to accounts or in respect of direct payments to accounts and the amount of the cheque or direct payment represents assessable income, the amount of the duty so passed may be allowed as a deduction under sub-section 51(1).

Bank Account Debits Tax

6. The Commonwealth and the State of Tasmania have each enacted legislation to impose a tax on debits to certain bank accounts. The relevant Acts are:-

Commonwealth	-	Bank Account Debits Tax Administration Act 1982 : Bank Account Debits Tax Act 1982
Tasmania	-	Stamp Duties Amendment Act (No. 4) 1983

7. The tax applies to all debits, other than those specifically exempted, made to bank accounts on which cheques may be drawn against banks. Liability for the tax falls upon the banks who have a statutory right to recover from customers maintaining cheque accounts an amount equal to the tax payable on debits to their accounts.

8. Charges made by banks to recover Bank Account Debits tax payable in respect of debits to qualifying accounts are allowable as income tax deductions to the extent that the underlying debit is itself an allowable income tax deduction and does not represent a loss or outgoing of capital or of a capital, private or domestic nature.

COMMISSIONER OF TAXATION
12 June 1984