

IT 214 - Income tax: dissolution of partnership and disposal of property - application of sections 59(2A) and 59(2D)



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TAXATION RULING NO. IT 214

DISSOLUTION OF PARTNERSHIP AND DISPOSAL OF PROPERTY -
APPLICATION OF SECTIONS 59(2A) AND 59(2D)

F.O.I. EMBARGO: May be released

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DISPOSAL OF UNIT
OF PROPERTY
BALANCING CHARGE
PARTNERSHIPS

59(2A)
59(2D)

PREAMBLE

Following the decision of Taxation Board of Review No.2 in 22 CTBR(NS) Case 61; 78 ATC Case K1, a question arose concerning the application of section 59(2A) in circumstances where a partnership is dissolved, property of the partnership is disposed of and the former partners individually acquire in their own rights property to replace that disposed of by the partnership.

2. In the particular case a partnership, comprising a private company and three individuals, disposed of a fishing vessel for an amount which produced an adjustment of depreciation under section 59(2) of a substantial amount. One member of the former partnership, the private company, acquired another fishing vessel in its own right and sought to have its share of the depreciation adjustment treated as a balancing charge under section 59(2A) to reduce the cost of the new vessel acquired by it.

3. Consideration of the question was complicated by the additional fact that the other members of the former partnership, after acquiring with others varying interests in a new fishing vessel, intended to make requests in terms of section 59(2D) that their shares of the depreciation adjustment be treated as a balancing charge and applied against the cost of the new vessel. However, the Board decision referred to above put an end to their intentions.

RULING

4. As a matter of interpretation it must be accepted that section 59 has application in a partnership situation. The Acts Interpretation Act would require that the term "taxpayer" appearing in section 59 to be also understood as "taxpayers". This would mean that where partnership property is sold section 59, standing alone, would operate to include in the assessable income of each partner his share of the depreciation adjustment. In this event there is no question that the terms of section 59(2A) would operate in the case under review.

5. The only question that arises is - does section 90 require any different conclusion to the operation of section 59? There is no reason to suggest that it does. Section 90 is in the nature of a machinery provision. Its effect, insofar as section 59 is concerned, is simply to deal with the depreciation adjustments in the one return, i.e. the partnership return. In all the circumstances of this case and other conditions being satisfied, the view has been reached that the private company which acquired a fishing vessel in its own right to replace that formerly owned by the partnership would be entitled to the benefit of section 59(2A). It is not accepted, however, that section 59(2D) has application in the circumstances represented by the other former members of the partnership who acquired an interest in property as distinct from the property itself.

COMMISSIONER OF TAXATION