


IT 2232 - Income tax : deductibility of pre-paid caravan site lease and facility fees

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TAXATION RULING NO. IT 2232

INCOME TAX : DEDUCTIBILITY OF PRE-PAID CARAVAN SITE
LEASE AND FACILITY FEES

F.O.I. EMBARGO: May be released

REF

H.O. REF: J 126/17/4 P1
83/6163

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED: 9 July 1985

F.O.I. INDEX DETAIL

REFERENCE NO:

SUBJECT REFS:

LEGISLAT. REFS:

I 1194420

51(1)
82AB
226(2)
260

FACTS

In recent decisions handed down by Taxation Board of Review No.3 the main issue was the deductibility under sub-section 51(1) of pre-paid caravan site lease and facility fees. Also at issue was the deductibility of the partnership's expenditure on caravan lease fees and interest on borrowings, the entitlement to investment allowance on the caravans and the imposition of additional tax under sub-section 226(2) in respect of the partners' individual interests in the net loss of the partnership. The Board's decisions are reported as Case S41 85 ATC 333 and Case 47 28 CTBR (NS) 345.

2. The taxpayers, a husband and wife partnership, entered a scheme under which they were to pre-pay five years caravan site lease fees and, by way of a separate agreement, pre-pay five years fees for use of caravan park facilities. The funds for those fees were originally loaned by the promoter's finance company but were subsequently refinanced by a regular finance company. At the same time they entered a separate "management agreement" with another promoter company under which they agreed to allow that company to hire out the caravans that they were to put on the sites, in return for a guaranteed sum paid monthly. If the hirings exceeded that sum the management company was to receive a fee of ten percent of the gross fees from hiring. In addition the agreement granted the management company an option to purchase the taxpayers' interests in the site leases and the rights to the facilities for a fixed sum at the expiration of three years.

3. The taxpayers relied to a large degree upon an advisor who was not called to give evidence before the Board. On the taxpayers' evidence the Board found that they thought they were entering into a business venture with real commercial prospects although they undertook no worthwhile analysis of their prospects. The Board found that they had no reasonable prospect of covering their costs.

4. It was held by the Board that -

- (i) The expenditure claimed was incurred in gaining or producing the guaranteed fee received.
- (ii) Sham and 'fiscal nullity' had no application on these facts.
- (iii) Section 260 had no application. The taxpayers outlaid real funds and they believed that they were entering a venture with real commercial prospects. They considered, incorrectly, that the option to sell was theirs, that being so the arrangements lost the characteristics of a tax avoidance scheme.
- (iv) The taxpayers were not entitled to the investment allowance deduction claimed as the caravans were not used or installed ready for use during the year of income.
- (v) Additional tax was incorrectly imposed following the reasoning in FCT v. Rabinov & Anor 83 ATC 4437 14 ATR 425 and FCT v Sahhar 16 ATR 208 85 ATC 4072. At the hearing counsel for the Commissioner had conceded that additional tax was incorrectly imposed in respect of the investment allowance claimed.

RULING 5. Having regard to the findings of fact in these cases it has been decided to accept the Board's decisions. The particular arrangements involved the taxpayers in the outlay of real funds, the management company did not exercise the option and the taxpayers suffered considerable real losses from the venture. The decisions may be applied to other participants in the scheme who have protected their rights with valid objections, references or appeals and where the factual circumstances are substantially similar. Where it can be established in a particular case that the taxpayer fully realized the implications of the scheme and entered into it solely, or predominantly, to avoid tax, then action should be taken to have the objection disallowed or for the reference or appeal to be forwarded to a Board of Review or court so that the issue might further be tested.

COMMISSIONER OF TAXATION
31 December 1985

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