IT 2270 - Income tax: application of overseas ships provisions to time charters

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TAXATION RULING NO. IT 2270

INCOME TAX : APPLICATION OF OVERSEAS SHIPS PROVISIONS TO TIME CHARTERS

F.O.I. EMBARGO: May be released

REF H.O. REF: 85/1421-6 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1076004	OVERSEAS SHIPS WHETHER TIME CHARTER OPERATES AS A DEMISE OF THE VESSEL	129-135A

RULING

Division 12 of the Income Tax Assessment Act provides a basis for calculating income tax liability where a ship, owned or chartered by a person whose principal place of business is outside Australia, carries passengers, livestock, mails or goods shipped in Australia. By virtue of section 129 income tax is payable on 5% of the amount paid for the carriage of passengers etc.

2. Canberra Income Tax Circular Memorandum No.563 (CITCM 563) highlights the need to draw a distinction between amounts paid for carriage (usually termed freight or in the case of passengers, fares) and amounts paid for a lease or demise of a ship (usually termed hire). CITCM 563 goes on to say that contracts for the lease or demise of a ship are made by charter party and that the lease or demise may extend for a specified period (time charter) or for a specified voyage or voyages (voyage charter). Hire paid for the lease or demise of a ship does not fall within the operation of section 129.

3. It has been suggested that the Company Assessing Handbook does not wholly reflect the terms of CITCM 563. At paragraph 5.38.53 of the Company Assessing Handbook a time charter is expressed to be one in which the vessel is hired to the charterer who receives the freights. Later on in the Chapter reference is made to a time or voyage charter operating as a demise of the ship.

4. CITCM 563 cites time charters and voyage charters as types of charter parties under which a contract for the demise of a ship may be made. It does not, and is not intended to, suggest that all time charters or voyage charters involve a demise of the vessel in question. The distinction that is drawn is between contracts of freight and contracts of hire. It is not sufficient that a particular arrangement is designated a time or voyage charter. It is what the nature of the arrangement really is that matters. Payments under time

charters or voyage charters will only be exempt from section 129 where the charter operates as a demise of the ship and the payments are in respect of the hiring of that vessel and not for the carriage of goods. Hire payments may of course be assessable under sub-section 25(1) if they are derived by a resident of Australia or if they have a source in Australia.

5. Although time charters and voyage charters commonly refer to payments "for use and hire" of the vessel, where the services of the master and crew are included under the contract, the essence of the contract will generally be that the shipowner has agreed to carry the goods of the charterer during a specified time or for a specified voyage. It follows that there is a liability to tax under Division 12 unless it can be clearly demonstrated that the charter was a "bareboat" charter or that there was a demise of the vessel under the charter party.

6. This Ruling is of course subject to any provisions of a Double Tax Agreement entered into by Australia. Where income arising under time or voyage charters is dealt with under a Double Tax Agreement, the provisions of the Double Tax Agreement will take precedence over Division 12.

7. Replacement pages for the Company Assessing Handbook will be issued as soon as possible. Where advice has been given or action taken on the belief that time charters and voyage charters did not come within Division 12, there should not be any retrospective adjustments.

COMMISSIONER OF TAXATION
28 March 1986

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