

IT 27 - Decision of Board of Review re apportionment of investment allowance and power to increase assessment



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TAXATION RULING NO. IT 27

DECISION OF BOARD OF REVIEW RE APPORTIONMENT OF
INVESTMENT ALLOWANCE AND POWER TO INCREASE ASSESSMENT

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1100278	INVESTMENT ALLOWANCE -	82AA
	APPORTIONMENT	193(1)
	BOARD OF REVIEW -	195(1)
	POWERS	

PREAMBLE The following issues emerged from the Board of Review's decision in 80ATC Case M49, 24 CTBR (NS) Case 22.

RULING 2. The question for decision by the Board was whether the taxpayer was entitled to a deduction under section 82AB in respect of a computer and other office equipment purchased by it and installed and used wholly and exclusively in its business as a credit union. The major part of the taxpayer's income arose from loans to its members and was therefore exempt in terms of section 23G. Upon assessment, a deduction was allowed, based upon an apportionment of the deduction between exempt and assessable income.

3. Before the Board, however, the Commissioner contended that no deduction should have been allowed because the eligible property was not used wholly and exclusively for the purpose of producing assessable income as required by section 82AA(a). The majority of the Board, Messrs Stevens and Harrowell, found no difficulty in accepting this submission. However, Mr Fairleigh QC considered that the apportionment adopted in the assessment was correct. In this view each use of the said equipment, either to produce assessable income or non-assessable income, was incidental to the other use and inseparable therefrom; apportionment was appropriate.

4. An interesting aspect of the decision is the Board's consideration of whether it should increase the assessment by disallowing the amount allowed by the Commissioner. Mr Stevens said there were no new facts before the Board. As the Commissioner had made a mistake of law and could not himself have amended the assessment the Board did not have a greater power of review. He concluded that even if he was of a different view as to the Board's powers he would not have considered the case before the Board to be a suitable one to exercise those powers to increase the taxpayer's assessment. Mr Fairleigh considered that the Board had no power to confirm an assessment which the Board is convinced is wrong; in his view,

however, the subject assessment was correct. Mr Harrowell took a different view again. He considered that the Commissioner had erred in law. The question of law formed part of the taxpayer's objection and was properly before the Board. He found that the Board had power to increase the assessment and that it should exercise that power. In the result, the Commissioner's decision on the objection was confirmed.

COMMISSIONER OF TAXATION