


# ***IT 191 - Home office expenses***

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TAXATION RULING NO. IT 191

HOME OFFICE EXPENSES

F.O.I. EMBARGO: May be released

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HOME OFFICE EXPENSES

51

74 ATC CASE F53

18 CTBR (NS) CASE 60

72 ATC 4094; 3 ATR 165

OTHER RULINGS ON TOPIC

IT 140, IT 192, IT 193, IT 194

PREAMBLE

In the memorandum dated 11 October 1974 from Head Office it was stated that an appeal to the Supreme Court of New South Wales would be lodged against the decision of Taxation Board of Review No.1 reported as 74 ATC, Case F53; 19 CTBR(NS) Case 65.

FACTS

2. The taxpayer in that Case was an employee architect who, in addition to the salary from his employment, had derived income of \$900 from freelance architectural work carried out at his home. The evidence before the Board established that the taxpayer's home consisted of a two-bedroom flat, one bedroom of which was set aside and used almost wholly for activities associated with his architectural work. He claimed a deduction of \$400 being one-quarter of the rent of the flat. The Board allowed a deduction for the rent of \$333 representing the proportion of the total rent on a floor area basis referable to the second bedroom.

RULING

3. After further consideration of the arguments available to the Commissioner in the proposed appeal it was decided to accept the Board's decision and withdraw the appeal. It will be recalled that, about the same time, the Commissioner had appealed to the Supreme Court of New South Wales against another decision of Taxation Board of Review No.1 relating to home office expenses and reported as 74 ATC, Case F55; 19 CTBR (NS) Case 67. The latter taxpayer was an employee who had set aside one room of his home as an office in preference to using the office facilities provided by his employer. In the result the Commissioner's appeal in the latter case was upheld, FC of T v McCloy 75 ATC 4079, 5 ATR 315, but it was felt that an adverse decision in the proposed appeal might have prejudiced the Commissioner's position in an area in which he was anxious to consolidate the decisions of the High Court in Thomas v FC of T 72 ATC 4094, 3 ATR 165 and Faichney V FC of T (1972) 129 CLR 38.

4. At the same time it was recognised that there was a need to modify slightly the instructions relating to the deductibility of home office expenses. In the memorandum of 12 November 1973 issued from Head Office following the decision of Wickham J. in *Caffrey v FC of T* 73 ATC 4144, 4 ATR 109, official practice in relation to home office expenses was stated in paras 12 and 13 in these words:-

"12. In the meantime, it is proposed to continue the policy of rejecting claims for a proportion of interest, rent insurance or repairs paid in respect of the domestic establishment of an employee which is used partly for purposes associated with his employment activities unless the circumstances are such that you are satisfied that the taxpayer does far more than bring work home for his personal convenience. For deductions to be allowable, the taxpayer will need to show either that he is carrying on an independent business or profession from a part of the building used as his home (as when a taxpayer, although an employee, has a significant income from free-lance work). Deductions should also be allowed, of course, for the kind of expenditure which Mason J. held to be allowable in *Faichney's Case*.

13. In other words, the home office must not only be used wholly and exclusively for income producing activities, but should be of such a nature that it would be "suitable only for use as business premises" and could therefore be looked upon as having ceased to be part of the taxpayer's domestic establishment. For this purpose, it should not be accepted that a room is used wholly and exclusively for purposes related to the taxpayer's income producing activities if it is also used for the storage of papers, books, furniture, etc., which are unconnected with those activities, or if the common-sense view is that the taxpayer and his family probably do use it for their private purposes from time to time."

5. It has now been decided that, where a taxpayer derives assessable income from self employed activities carried out at his home, a deduction may be allowed up to a reasonable amount in respect of rent, interest, insurance etc. paid in respect of the home. The class of taxpayer to whom the deduction may be allowed is an employee who carries on at a room or office in his home an income producing activity independent from his employment, e.g. the employee accountant who conducts a tax agent's practice from a room in his home, the employee architect who does freelance work at a room in his home as in 74 ATC, Case F53; 19 CTBR(NS) Case 65. The deduction may also be allowed where the taxpayer's home is the place of business, e.g. the music teacher who gives lessons at home. Other similar situations will no doubt be encountered in practice.

6. In one sense it might be said that the barrister, as in *Thomas' case*, who studies briefs and prepares opinions in a

study in his home is engaged in self-employed activities at his home. It is not intended that any deduction for rent, interest, insurance etc. paid in respect of the home in these circumstances should be allowed. The income in that sort of situation is really derived from activities carried on at the barrister's chambers and the study at his home is nothing more than a study.

7. What is a reasonable amount to be allowed as a deduction will depend upon the circumstances of each case. In some instances where a room in the home is used for income producing purposes for part only of the year, it may be necessary to apportion the expenses on a floor area plus time basis. In other cases the apportionment on a floor area basis may be sufficient.

8. Subject to this modification the existing instructions relating to the deductibility of home office expenses should continue to be applied.

COMMISSIONER OF TAXATION