

IT 194 - Home office expenses

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TAXATION RULING NO. IT 194

HOME OFFICE EXPENSES

F.O.I. EMBARGO: May be released

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OTHER RULINGS ON TOPIC	IT 140, IT 191, IT 192, IT 193	

FACTS In 81 ATC, Case N43; 24 CTBR(NS) Case 112 the taxpayer, an engineer by profession, also engaged in the part-time occupation of marking examination papers. He marked the examination papers in one of the bedrooms in his home which he had converted into an office for the purpose.

2. In the return of income for the relevant year the taxpayer claimed a deduction for maintenance of home office, electric light, telephone, etc. The claim included an unspecified amount in respect of interest on money borrowed to acquire the home. On assessment a nominal amount was allowed as a deduction. The reference to the Taxation Board of Review was concerned with the balance of the claim.

RULING 3. Relying on the decisions of the High Court in FC of T v Forsyth 81 ATC 4157, 11 ATR 657 and Handley v FC of T 81 ATC 4165, 11 ATR 644 the Board has rejected the taxpayer's claim and confirmed the assessment.

4. Dr Gerber delivered the principal decision of the Board. Notwithstanding that the assessment under review was confirmed some care needs to be taken with what Dr Gerber has expressed to be the clear rule of law emanating from the High Court decisions. In the final paragraph of his decision Dr Gerber described the clear rule of law in the following terms:-

"Where a home office is an integral part of a taxpayer's home - however predominant its use for income earning activities - any payment on interest lacks the characteristic of an expenditure of a business character."

5. With respect to Dr Gerber, his statement of the law in this area seems to be wider than anything said by the High Court. In all of the cases which it has dealt with on this topic the High Court has been concerned with the use of a study in a taxpayer's home and it has said that, where a taxpayer uses a study in his home to do work connected with his employment or business activities, he will not be allowed a deduction for

interest, rent, etc.

6. The difficulty with Dr Gerber's statement is the phrase "however predominant its use for income earning activities". Murphy J. said in the Handley case (81 ATC at page 4173, 11 ATR at page 653) :-

"There are circumstances in which a barrister's outgoings in connection with the part of his home would not fall within the exception of outgoings of a private or domestic nature, e.g. if part of the home were actually used for professional chambers. If the part of a home used in gaining assessable income were in a real sense a place of business, this would in general mean that the outgoing (even if some apportionment were called for) would be allowable. Thus, the case is quite different from that of a doctor, a marriage celebrant, a caterer, an author or a solicitor who uses part of his or her home as a place of business.

7. The decision of the Board is not to be taken as modifying in any way the principles set out in Taxation Ruling IT 191. As stated in that Ruling, 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 situations will no doubt be encountered in practice.

COMMISSIONER OF TAXATION