


IT 2163 - Income tax: purchase and sale of import quota

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TAXATION RULING NO. IT 2163

INCOME TAX: PURCHASE AND SALE OF IMPORT QUOTA

F.O.I. EMBARGO: May be released

REF H.O. REF: 85/662-2 DATE OF EFFECT:

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F.O.I. INDEX DETAIL

REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

I 1187060 IMPORT QUOTA - PURCHASE
OR SALE
TEXTILES
CLOTHING, FOOTWEAR

OTHER RULINGS ON TOPIC: IT 2002

PREAMBLE The Commissioner's application for special leave to appeal to the High Court against the decision of the Federal Court in FCT v. Merv Brown Pty. Ltd. (reported at 85 ATC 4080 and 16 ATR 218) was refused on 24 May 1985.

2. The purpose of this ruling is to explain the effect of the Federal Court decision on Taxation Ruling No. IT 2002 which deals generally with this subject.

FACTS 3. Following the announcement by the Government in 1980 of a new import quota system which was to operate from January 1982 for seven years, Merv Brown Pty. Ltd. sought to reorganise its business activities by increasing its business in its principal areas of non-fashion garments and by withdrawing from the non-profitable trading areas of fashion garments. As a part of the reorganisation the company disposed of its base quota entitlements in categories it no longer required and increased its holding of base quota entitlements in categories in which it sought to increase its business. Proceeds from the sale of base quota entitlements over the three income years 1980 to 1982 totalled \$1,856,150.

4. The Court held by majority that the proceeds of sale were of a capital nature not liable to tax. The High Court refused to grant special leave to appeal against the decision on the grounds that there was not any question of general principle involved - it was a matter of applying established principles to the facts of the case.

RULING 5. In substance the decision of the Federal Court supports the approach followed in Taxation Ruling No. IT 2002, i.e. that the questions whether an amount received for the sale of quota and an amount paid to acquire quota are of an income or capital nature depend upon the facts of each case.

6. The decision recognises that amounts received or paid for quota in respect of a mere change in product lines would ordinarily be of an income nature and this would be so whether base, annual or tender quota was involved.

7. In the instant case, however, there was more than a mere change in product lines. The majority accepted the findings of the trial judge that the sales of quota were associated with a reorganisation of the company's business structure consequential upon the changes announced and effected by the Government in the import quota system for the textile, clothing and footwear industries. The degree of reorganisation was such as to confer on the amounts received from the sale of quota the nature of capital receipts.

8. To this extent Taxation Ruling No. IT 2002 is modified. This will mean that any undetermined objections or appeals should be reviewed in the light of the Federal Court decision. Where it is established that amounts received for the sale of quota arose out of a business restructuring or reorganisation comparable to that which occurred in the Merv Brown Pty. Ltd. case the objections should be allowed. Conversely where payments have been made to acquire quota in similar circumstances objections should be disallowed.

9. In other cases Taxation Ruling No. IT 2002 should continue to be applied.

COMMISSIONER OF TAXATION
31 May 1985

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