IT 2183 - Income tax : repairs : expenditure incurred in controlling health risks associated with the use of asbestos in income producing properties

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TAXATION RULING NO. IT 2183

INCOME TAX : REPAIRS : EXPENDITURE INCURRED IN CONTROLLING HEALTH RISKS ASSOCIATED WITH THE USE OF ASBESTOS IN INCOME PRODUCING PROPERTIES

F.O.I. EMBARGO: May be released

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I 1123980	ASBESTOS : CONTROL OF HEALTH RISKS ASSOCIATED WITH THE USE OF ASBESTOS IN INCOME PRODUCING PROPERTIES REPAIRS	53

FACTS For quite a number of years, particularly in the 1950s, 1960s and 1970s, asbestos has been used in building and other structures for fire rating and insulation purposes.

2. In recent times, however, attention has been focused on the possible health risks associated with the presence of asbestos in buildings, structures, etc. Legislation relating to the use of asbestos has been or is in the course of being introduced in all States and Territories.

3. In many properties which are used for the purpose of producing assessable income expenditure has been incurred either to control existing health risks emanating from the presence of asbestos or to treat the asbestos in order to prevent health risks occurring in the future.

4. There are a number of ways in which the health risks may be controlled. They include:-

Enclosing - the placing of a barrier between the asbestos material and the surrounding environment, e.g. building a box enclosure around exposed asbestos-lagged steam pipes;

Encapsulation or Sealing - the coating of the asbestos material with a substance designed to prevent the release of asbestos fibres;

Removal - this is considered to be the last resort. It is necessary when the asbestos material is breaking away from the base, when it is likely to be abraded or otherwise damaged or when the surface is very friable.

RULING

5. Whichever method of control is employed it is considered that the work involved qualifies as a repair within the meaning of section 53 of the Income Tax Assessment Act. This is so whether the work is necessary to control health risks actually existing or whether it is carried out to prevent health risks occuring. In this context reference is made to the observations of Pearson J. in Day v. Harland & Wolff Ltd. (1953) 2 ALL E.R. 387 at p.388:

> "So, very broadly speaking, I think that to repair is to remedy defects, but it can also properly include an element of the 'stitch in time which saves nine'. Work does not cease to be repair work because it is done to a large extent in anticipation of forthcoming defects or in rectification of merely incipient defects, rather than the rectification of defects which have already become serious. Some element of anticipation is included."

6. Where, therefore, expenditure is incurred by a taxpayer on any of the measures referred to above for the controlling of health risks associated with the use of asbestos in an income producing property and the expenditure otherwise meets the requirements of section 53 of the Income Tax Assessment Act it will be allowable as an income tax deduction.

7. It is necessary to express the qualification that the expenditure should otherwise satisfy the requirements of section 53. In some cases expenditure which may qualify as expenditure on repairs within the ordinary meaning of the term is not an allowable deduction under section 53. If, for example, a building is purchased with an existing asbestos health risk problem, expenditure by the purchasers on the control of the health risk problem would be expenditure of a capital nature, i.e. in reality it would be part of the cost of acquisition of the building. So also, if it was necessary to remove asbestos prior to the demolition of a building or as part of a major alteration to a building the cost of the removal would be part of the costs of demolition or alteration and consequently of a capital nature.

COMMISSIONER OF TAXATION
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