IT 2401 - Income tax : overseas study tour expenses

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TAXATION RULING NO. IT 2401

INCOME TAX : OVERSEAS STUDY TOUR EXPENSES.

FOI EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT REFS:
I 1210891	TRAVELLING EXPENSES - OVERSEAS STUDY TOUR OVERSEAS TRAVEL	51(1)

OTHER RULINGS ON TOPIC IT 2083, IT 2151, IT 2315, IT 2379

PREAMBLE In a recent reference the Administrative Appeals Tribunal (Mr P.M. Roach, Senior Member) considered a claim by a History lecturer at a college of advanced education to deduct the cost of a tour in China. The Tribunal concluded that no deduction is allowable under sub-section 51(1) of the Income Tax Assessment Act. The decision is reported as Case U54 87 ATC 354.

FACTS 2. The taxpayer held a tenured appointment as Senior Lecturer at a college of advanced education. He taught Early Modern European History, African History and Third World History. The taxpayer took a particular academic interest in the area of Afro-Asian studies - the field in which he had taken a post graduate degree. Each year since 1974 he had travelled overseas, mostly in his annual leave and usually accompanied by his wife although on some occasions he had been granted special leave by his employer.

3. During the income year ended 30 June 1983 the taxpayer and his wife visited China in a group tour organised by the Australia-China Society. The tour was undertaken between 17 December 1982 and 10 January 1983, during a period of recreation leave available to both the taxpayer and his wife. The tour was confined to a few parts of China. The itinerary was determined by the Chinese authorities and included as much of China and of Chinese society in the time available as those authorities permitted. The taxpayer saw something of rural development and the development of free markets. In the course of the tour the taxpayer took numerous slides, some of which had been used in his teaching. The taxpayer received a grant of $210 from the college as a contribution towards his travelling expenses.

TRIBUNAL'S DECISION

4. The Tribunal canvassed at length the reasons for decision of the High Court in FC of T v Finn (1961) 106 CLR 60. It concluded that the decision in each case often will depend on

the facts of the case, noting that just because a certain architect, engineer or academic gained a deduction for expenses incurred in travelling overseas it did not mean that all architects, engineers or academics would be entitled to deductions in superficially similar circumstances. At paragraph 18, the Tribunal said.

> "I do not understand any of the judges (in Finn) to have proposed that whenever an architect, or other professional person or other person who gains income by the exercise of skills in some profession or calling, travels and in travelling in some degree improves his acquaintance with modern developments in his field, thereby maintaining or increasing his learning, knowledge, experience and ability, that the requirements from section 51 are automatically met. In my view, had the circumstances of Finn's employment and his itinerary been as they were, but his activities in the course of the journey had differed, the appropriate conclusion from facts so found might well have been that he was simply 'on holiday'."

5. In the matter before it the Tribunal found on the evidence presented that the taxpayer had not undertaken the tour as part of any study leave program sponsored by the college whereby members of academic staff were encouraged to undertake programs of study for the sake of their own intellectual development and the advancement of their institution. He, with his wife, journeyed during a period of recreational leave in a party with no stronger common interest than a desire to tour China and nothing in the manner of the travel or undertakings on the tour distinguished the taxpayer from any other intelligent and interested person in the party. The tour was an occasion for broadening the knowledge and understanding of the taxpayer in ways personally satisfying to him. As was the case of many persons who have the good fortune to find personal satisfaction in their work, the taxpayer found his recreational satisfactions in a field of endeavour which was also related in some ways to the field of activity in which he carried out his principal income-earning activities. The fact that he had toured, albeit in a limited way, countries which were the subject of study in courses in which he lectured was quite likely to make him a better teacher than he otherwise would have been but, in the view of the Tribunal, the circumstances of the case were such that that general consideration was not sufficient to make the expenses deductible.

6. The Tribunal concluded that as the tour undertaken was essentially recreational in character there was no basis for an apportionment of the expenditure incurred. The claim to deduct the cost of the tour and other incidental expenses ($2,480) was rejected in full.

RULING

7. The decision involves a particular factual situation and is consistent with established authorities. No change is required to existing official practice. The decision highlights the requirement that each claim must be determined on its own

particular facts.

COMMISSIONER OF TAXATION
21 May 1987