


IT 90 - Life insurance companies: general management expenses

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TAXATION RULING NO. IT 90

LIFE INSURANCE COMPANIES : GENERAL MANAGEMENT EXPENSES

F.O.I. EMBARGO: May be released

REF

H.O. REF: 69/5015 F165

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED: 21.12.72

F.O.I. INDEX DETAIL

REFERENCE NO:

SUBJECT REFS:

LEGISLAT. REFS:

I 1070868

LIFE INSURANCE COMPANIES
GENERAL MANAGEMENT EXPENSES

113(2)

PREAMBLE

The following advice issued as a result of a High Court decision concerning the taxation treatment of salaries and expenses of divisional managers and inspectors.

FACTS

2. The Producers & Citizens Co-operative Assurance Co. Case ((1971) 124 CLR 143) concerned the interpretation of the special provisions in the Act relating to life assurance companies. Section 111 excludes from the assessable income of a life assurance company premiums on policies of life assurance and considerations received for annuities granted. Correspondingly section 112 denies a deduction of expenditure exclusively incurred in producing these classes of receipts. Subject to sections 111 and 112 the assessable income of a life assurance company is determined generally according to the basic provisions of the Act and section 51 operates to allow a deduction of expenditure incurred in gaining or producing the assessable income.

3. Between the expenditure precluded from deduction by section 112 and that allowed as a deduction under section 51 there is a class of expenditure, i.e. general management expenditure, which is not exclusively incurred in gaining premium income and some of which relates to the earning of assessable income.

4. The deduction for expenditure incurred in the general management of the business of a life assurance company is governed by section 113. If the company so elects, sub-section (1) operates to allow the deduction according to the principle of section 51, i.e. the expenditure on the general management of the business is allowable to the extent that it is incurred in gaining or producing the assessable income. Where no election is made, sub-section (2) operates to allow a deduction of the proportion of the expenditure incurred in the general management of the business that the assessable income bears to the total income. It is obvious that sub-section (2) achieves in an arbitrary fashion the result contemplated in sub-section (1).

5. It was sub-section (2) which was involved in this appeal and the company sought to include in its general

management expenditure the salaries and expenses of divisional managers and inspectors amounting to \$410,606. The duties performed by the divisional managers and inspectors were described in detail by Menzies J. who rejected the claims altogether. His Honour held that the inspectors played no part in the management and although divisional managers did perform managerial functions, those functions were not part of general management, a concept which he considered to be somewhat narrower than management and to relate to the management of the business as a whole.

RULING 6. The Full Court, by majority of three to one, has found that the salaries and expenses of divisional managers amounting to \$89,658 are properly to be included in the expenditure in the general management of the business of the company. Walsh and Stephen JJ. expressly found this way, the Chief Justice would have allowed the company's claims in full while McTiernan J. agreed with the decision at first instance. It is clear from the judgments that the majority did not subscribe to the view of Menzies J. that the word "general" in section 113 was a word of limitation - on the contrary the majority was of the view that the use of the term "general" was an indication that all expenses of management were to be included in the apportionment under section 113(2).

7. The Commissioner accepts the decision. It is apparent that, had the company made an election under sub-section (1), some of the expenditure would have been found to have been incurred in gaining the company's assessable income. The decision of the Court produces much the same result.

8. It is difficult to say whether the decision will lead to similar claims by other insurance companies. The reason that promoted this appeal by the company was that it claimed to operate in a manner different to any other life assurance company. In any event where other life assurance companies establish a similar modus operandi, the decision may be applied.

COMMISSIONER OF TAXATION