TR 95/33 - Income tax: subsection 51(1) - relevance of subjective purpose, motive or intention in determining the deductibility of losses and outgoings

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Taxation Ruling
Income tax: subsection 51(1) - relevance of subjective purpose, motive or intention in determining the deductibility of losses and outgoings

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This Ruling, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the ***Taxation Administration Act 1953****, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Ruling is about

Class of person/arrangement

1. This Ruling considers the decision of the Full High Court of Australia in *Fletcher & Ors v. FC of T* 91 ATC 4950; (1991) 22 ATR 613 ('*Fletcher*') and in particular, considers situations in which a taxpayer's subjective purpose, intention or motive is relevant in determining the availability of an income tax deduction under subsection 51(1) of the *Income Tax Assessment Act 1936* ('the Act'). It also relates these principles to the usual kind of negatively geared investments.

Ruling

2. Expenditure will generally be deductible under subsection 51(1) if its essential character is that of expenditure that has a sufficient connection with the operations or activities which more directly gain or produce the taxpayer's assessable income, provided that the expenditure is not of a capital, private or domestic nature.
The essential character of an expense is a question of fact to be determined by reference to all the circumstances.

3. If an outgoing produces an amount of assessable income greater than the amount of the outgoing, there would normally be no need to examine the taxpayer's subjective thought processes (i.e., motives and intentions) in characterising the outgoing as falling within the first limb of subsection 51(1).

4. However, if the outgoing produces no assessable income, or the amount of assessable income is less than the amount of the outgoing, it may be necessary to examine all the circumstances surrounding the expenditure to determine whether the outgoing is wholly deductible. This may, depending on the circumstances of the particular case, include an examination of the taxpayer's subjective purpose, motive or intention in making the outgoing.

5. If, after weighing all the circumstances, including the direct and indirect objectives and advantages, in a commonsense and practical manner, it can be concluded that the expenditure is genuinely, and not colourably, used in an assessable income producing activity, a deduction is allowable for the loss or outgoing.

6. If it is concluded that the disproportion between the outgoing and the relevant assessable income is essentially to be explained by reference to the independent pursuit of some other objective (e.g., to derive exempt income or the obtaining of a tax deduction), then the outgoing must be apportioned between the pursuit of assessable income and the other objective: see *Fletcher* at 91 ATC 4957-8; 22 ATR 621-3.

Application of these principles

7. The principles adopted in *Fletcher* are not limited to artificial tax avoidance schemes and apply generally to all cases involving the application of the first limb of subsection 51(1).

Second limb of subsection 51(1)

8. We consider that the principles in *Fletcher* are also relevant to the second limb of subsection 51(1). However, and notwithstanding the similar ambit of the two limbs (see *Ronpibon Tin N L and Tongkah Compound NL v. FC of T* (1949) 78 CLR 47; 8 ATD 431), the tests within each limb are different and regard must be had to the relevant words of the second limb, i.e., the loss or outgoing must be 'necessarily incurred in carrying on a business for the purpose of gaining or producing [the assessable income].'

9. The test in the second limb of subsection 51(1) requires that the relevant outgoing be characterised as necessarily incurred in carrying on the business of the taxpayer for the specified purpose. In other words, the expenditure in question must have the necessary connection with the operations or activities which more directly gain or produce assessable income if it is to meet the statutory criterion of being a loss or outgoing necessarily incurred in gaining or producing assessable

income (see Hill J in *FC of T v. Roberts & Smith* 92 ATC 4380 at 4386; (1992) 23 ATR 494 at 502).

10. The relevant proposition from *Fletcher* is not that the outgoing be compared to the amount of assessable income arising as a result of incurring the outgoing but, rather, that in certain circumstances, the subjective purpose, intention or motive of the taxpayer can be relevant in determining whether the outgoing has the necessary connection with the carrying on of the taxpayer's business in order to enable it to be said that it was necessarily incurred in carrying on that business for the requisite purpose.

11. Where, having regard to the overall objective circumstances, there is an obvious commercial connection between the loss or outgoing and the carrying on of the taxpayer's business, it will not generally be necessary to have regard to the taxpayer's subjective purpose, motive or intention.

12. In those cases where there is no obvious commercial connection between the loss or outgoing and the carrying on of the taxpayer's business, or where the expenditure did not achieve its intended result, it may be necessary to have regard to the taxpayer's subjective purpose, motive or intention. These factors may be relevant, at least in an evidentiary sense, to the question whether the expenditure has actually been incurred **in the carrying on of the business for the purpose of gaining or producing assessable income**: see *Magna Alloys and Research Pty Ltd v. FC of T* 80 ATC 4542; 11 ATR 276.

Subjective purpose, motive or intention

13. When considering the subjective purpose, motive or intention in incurring a loss or outgoing, regard must be had to the purpose or motive that the taxpayer had in mind when the loss or outgoing was incurred. It may also be appropriate to have regard to the purposes of those who advised or acted on behalf of the taxpayer and whose acts or intentions as agents must be imputed to the principals: *Fletcher* 91 ATC 4950 at 4959; (1991) 22 ATR 613 at 624 and *Fletcher & Ors v. FC of T* 92 ATC 2045; *AAT Case 5489A* (1992) 23 ATR 1068. In the case of a company, the relevant purpose is the corporate purpose. This requires an examination of the purpose, motive or intention of the company's directors, officers and employees. However, the subjective purpose of any particular director, officer or employee will not by itself be determinative: see *Magna Alloys* per Deane and Fisher JJ 80 ATC 4542 at 4558; 11 ATR 276 at 294.

Apportionment of losses and outgoings

14. When it is necessary to apportion a loss or outgoing, the appropriate method of apportionment will depend on the facts of each case. However, the method adopted in any particular case must be both 'fair and reasonable' in all the circumstances (*Ronpibon Tin* (1949) 78 CLR 47 at 59; 8 ATD 431 at 437). In *Fletcher*, which was a first limb situation, it was 'fair and reasonable' to limit the amount of the deduction to the amount of the assessable income actually received in that year.

The relevant period

15. In this Ruling a reference to the relevant assessable income or the relevant allowable deductions does not necessarily refer to the income produced, or the expenditure incurred in a particular year of income. Thus, for example, if income is expected to be produced over a number of years from a single transaction it will be necessary to total the relevant assessable income reasonably likely to be produced during that period and compare it with the total expenditure reasonably likely to be incurred in order to produce that income.

Negative gearing

16. Negatively gearing the acquisition of an income producing asset will require a consideration of all the circumstances of the case in order to decide how much, if any, of the interest expense is deductible under subsection 51(1). In the commonly encountered kinds of circumstances where assets are negatively geared, a commonsense or practical weighing of all the factors surrounding the acquisition could be expected to lead to the conclusion that the relevant interest expense is properly to be characterised as genuinely, and not colourably, incurred in gaining or producing the assessable income and will fall entirely within either the first or second limb of subsection 51(1).

Date of effect

17. This Ruling applies to years commencing both before and after its date of issue. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Explanations

Fletcher : the facts and the decision - first limb of subsection 51(1)

18. The facts in *Fletcher's* case are described in brief terms. A group of companies promoted and implemented an annuity plan which had potential tax advantages. Acting on the advice of the promoter within that group, four natural persons entered into a partnership with a company associated with the promoter. The four persons contributed $50,000 and the promoter $1 as partnership capital. $35,000 of the $50,000 was paid as an establishment fee to the promoter. The remaining $20,000 together with borrowings of $2 million was paid by the partnership as consideration for an annuity over 15 years. The amounts receivable under the annuity were $170,000 in each of the first five years of the plan period, $600,000 in each of the second five years of the plan period and $1,119,000 in each of the final five years.

19. The cash inflow under the plan was expected to approximate the cash outflow over the first 10 years of the plan with a net cash inflow over the remaining five years of $34,071.

20. Importantly, the agreement provided that the promoter would redeem the annuity upon receipt of notice from the partnership at anytime after 23 months from the date of the agreement.

21. For taxation purposes it was said that the net loss of the partnership would vary between approximately $247,000 and $387,000 in each of the first five years, relatively small net losses (between approximately $10,000 and $13,000) in years six to ten of the plan and substantial net income (between approximately $504,000 and $854,000) in each of the last five years of the plan.

22. After a protracted period of litigation the issue between the parties before the High Court resolved itself into the question 'whether, and if so to what "extent", the outgoings of the amounts of interest payable ... under the two loan agreements were ... incurred ... "in gaining or producing the assessable income" and were not "of a capital, private or domestic nature" ' (see 91 ATC 4950 at 4957; 22 ATR 613 at 621). As can be seen, the taxpayers relied solely upon the first limb of subsection 51(1).

23. In its decision the Full High Court set out, *inter alia*, the following general propositions about certain aspects of subsection 51(1) that needed to be considered in determining the deductibility of the outgoings in question.

24. At 91 ATC 4957; 22 ATC 621-622, their Honours said:

> 'The question whether an outgoing was, for the purposes of s. 51(1), wholly or partly "incurred in gaining or producing the assessable income" is a question of characterisation. The relationship between the outgoing and the assessable income must be such as to impart to the outgoing the character of an outgoing of the relevant kind.'

25. Their Honours then indicated that it has been pointed out on many occasions that an outgoing will not properly be so characterised unless it is 'incidental and relevant to that end' (i.e., to the gaining or producing of the assessable income). They noted (at 91 ATC 4957; 22 ATR 622) that it has also been said that the test of deductibility under the first limb of subsection 51(1) is that:

> 'it is both sufficient and necessary that the occasion of the loss or outgoing should be found in whatever is productive of the assessable income or, if none be produced, would be expected to produce assessable income.'

See also *Ronpibon Tin* (1949) 78 CLR 47 at 57; 8 ATD 431 at 436.

26. Their Honours concluded (at 91 ATC 4957; 22 ATR 622):

> 'So to say is not, however, to exclude the motive of the taxpayer in making the outgoing as a possibly relevant factor in characterisation for the purposes of the first limb of s. 51(1). At least in a case where the outgoing has been voluntarily incurred, the end which the taxpayer subjectively had in view in incurring it may, depending upon the circumstances of the particular case, constitute an element, and possibly the decisive element, in characterisation of either the whole or part of the outgoing for the purposes of the subsection.'

27. Their Honours then indicated (at 91 ATC 4957; 22 ATR 622) that notwithstanding that the taxpayer's motive in making the outgoing may be relevant:

> '...it is commonly possible to characterise an outgoing as being wholly of the kind referred to in the first limb of s. 51(1) without any need to refer to the taxpayer's subjective thought processes.'

28. They explained that this will ordinarily be the case where the outgoing gives rise to the receipt of a larger amount of assessable income. At 91 ATC 4958; 22 ATR 622, their Honours said:

> 'In such a case, the characterisation of the particular outgoing as wholly of a kind referred to in s. 51(1) will ordinarily not be affected by considerations of the taxpayer's subjective motivation ... the objective relationship between the outgoing actually made and the greater amount of assessable income actually earned suffices, without more, to characterise the whole

> outgoing as one which was incurred in gaining or producing assessable income.'

29. However, in circumstances where no relevant assessable income can be identified or where the relevant assessable income is less than the amount of the outgoing, the Court indicated that the situation may well be different.

30. In such cases their Honours said that the disproportion between the detriment of the outgoing and the benefit of the income may give rise to the need to resolve the problem of characterisation by a commonsense or practical weighing of all the circumstances, including the direct and indirect objectives and advantages, which the taxpayer sought in making the outgoing. If, after weighing all the circumstances, it can be concluded that the whole outgoing is properly to be characterised as genuinely, and not colourably, incurred in gaining or producing assessable income, the entire outgoing will fall within the first limb of subsection 51(1) unless the outgoing satisfies the exclusory provisions (or negative tests) within the subsection.

31. Their Honours then said (at 91 ATC 4958; 22 ATR 623):

> 'If, however, that consideration reveals that the disproportion between outgoing and relevant assessable income is essentially to be explained by reference to the independent pursuit of some other objective and that part only of the outgoing can be characterised by reference to the actual or expected production of assessable income, apportionment of the outgoing between the pursuit of assessable income and the pursuit of that other objective will be necessary.'

32. In *Fletcher's* case the assessable income derived from the annuity in each of the tax years was less than one-eighth of the relevant amount of interest outgoings in that year. The High Court accepted the Commissioner's position that the deduction for interest outgoings should be allowed to the extent of the assessable income received from the annuity investment plan. The Court took the view that 'the outgoing in excess of the income received' could not necessarily be characterised as falling within the first limb of subsection 51(1).

33. At 91 ATC 4959; 22 ATR 624, they said:

> 'Beyond that point, the mere relationship between outgoings actually incurred and the much smaller amounts of assessable income actually derived does not suffice, without more, to answer the question whether, and if so to what extent, the adjusted outgoings of interest are properly to be characterised as incurred in gaining or producing assessable income. That question must be answered by reference to a common-sense

> appreciation of the overall factual context in which the outgoings were incurred. It necessarily involves a consideration of the contents and implications of the overall contractual arrangements to which the partnership became a party ... it also encompasses a consideration of the purpose which the members of the partnership, and those who advised them or acted on their behalf, had in view in incurring the outgoings.'

34. Whilst the Court indicated that the whole structure of the investment plan seemed to be predicated on an assumption that the various agreements would be effectively terminated at some time before the commencement of the last five years of the plan, it remitted the matter to the Administrative Appeals Tribunal ('AAT') to determine the intention of the parties. The AAT found that the taxpayers had not intended to remain in the scheme for the full 15 years (*Fletcher & Ors v. FC of T* 92 ATC 2045; *AAT Case 5489A* (1992) 23 ATR 1068).

Application of these principles

35. Although the decision in *Fletcher* was made in the context of an artificial tax avoidance scheme, we can see no basis for limiting it in this way. We think the approach applies generally to all cases involving the application of the first limb of subsection 51(1), albeit that its application is more likely to have an impact in the context of a tax avoidance scheme.

Second limb of subsection 51(1)

36. In our view the approach adopted in *Fletcher* has relevance to the second limb of subsection 51(1). In cases where an examination of the objective facts and circumstances does not disclose an obvious commercial connection between the loss or outgoing and the carrying on of the taxpayer's business, it may be necessary and relevant to have regard to the taxpayer's subjective purpose, motive or intention, at least on an evidentiary basis, for determining whether the expenditure was incurred in carrying on the business of the taxpayer for the purpose of gaining or producing assessable income.

37. In *Magna Alloys*, Deane and Fisher JJ commented upon the relevance of subjective purpose. At 80 ATC 4558; 11 ATR 294, their Honours said:

> 'There are some statements in the authorities which support the view that, in a case where the outgoing is voluntary in the sense that it was volitionally incurred in the pursuit of a particular advantage or object, the taxpayer's subjective purpose or motive

> or assessment of appropriateness to the ends of the business is of critical importance to the decision whether the outgoing was necessarily incurred in carrying on the relevant business.'

At 80 ATC 4559; 11 ATR 295, they also said:

> 'Where an outgoing which was not involuntary has actually achieved the purpose for which it was incurred or where the connection between an outgoing and the relevant business is direct and obvious, there will ordinarily be little practical point in distinguishing between characterisation of the outgoing by reference to what it achieved and characterisation in the light of the purposes and objects of those responsible for incurring it. Thus, in the ordinary case of a payment under a contract, the nature of the outgoing will commonly be determined by reference to the contractual *quid pro quo*. Cases where the outgoing does not achieve its intended purpose or where the connection with the business is indirect and remote demonstrate, however, the need to distinguish between the character of an outgoing determined merely by reference to objective factors and its character determined in the light of subjective purpose in any precise formulation of the ingredients of the second limb of s.51(1). The key to the role of the objective and subjective in such a formulation is, in the case of a voluntary outgoing, to be found in the statement of Fullagar J in *FC of T v. Snowden & Willson Pty Ltd* ... that "within the limits of reasonable human conduct the man who is carrying on the business must be the judge of what is 'necessary' ". The controlling factor is that, viewed objectively, the outgoing must, in the circumstances, be reasonably capable of being seen as desirable or appropriate from the point of view of the pursuit of the business ends of the business being carried on for the purpose of earning assessable income. Provided it comes within that wide ambit, it will, for the purposes of s.51(1) be necessarily incurred in carrying on that business if those responsible for carrying on the business so saw it.'

38. In the same case, Brennan J also expressed support for determining the taxpayer's subjective purpose in appropriate circumstances: see *Magna Alloys* at 80 ATC 4548-4549; 11 ATR 283-284.

Apportionment

39. In analysing subsection 51(1) in *Fletcher*, the Full High Court took the view that the words 'to the extent to which' in the subsection make it clear that apportionment of outgoings is contemplated in at

least two circumstances. At 91 ATC 4957, 22 ATR 621, their Honours quote the following passage from *Ronpibon Tin*:

> 'One kind consists in undivided items of expenditure in respect of things or services of which distinct and severable parts are devoted to gaining or producing assessable income and distinct and severable parts to some other cause. In such cases it may be possible to divide the expenditure in accordance with the applications which have been made of the things or services. The other kind of apportionable items consists in those involving a single outlay or charge which serves both objects indifferently.'

40. In relation to expenditure that is a 'single outlay' the High Court said in *Ronpibon Tin* (1949) 78 CLR 47 at 59; 8 ATD 431 at 437 that:

> '...there must be some fair and reasonable assessment of the extent of the relation of the outlay to assessable income. It is an indiscriminate sum apportionable, but hardly capable of arithmetical or rateable division because it is common to both objects.'

41. The High Court also stated in *Fletcher*, relying on *Ronpibon Tin*, that what represents the appropriate apportionment of such items of expenditure is essentially a question of fact in each case. See also *Kidston Goldmines Ltd v. FC of T* 91 ATC 4538; 22 ATR 168.

Negative gearing

42. There is a practice in relation to the acquisition of income producing assets known as 'negative gearing'. An inherent feature of negatively gearing an asset is that the interest payable on the funds borrowed to acquire the asset exceeds the income derived from the asset, at least in the initial years of ownership. Rental properties and share portfolios are commonly negatively geared. The practice, however, is not restricted to these kinds of investments.

43. Since the decision in *Fletcher*, we have been asked whether we will continue to accept deductions for interest incurred on money borrowed to acquire a negatively geared asset because there will be a disproportion between the detriment of the outgoing and the benefit of the income, at least in the early years of the investment.

44. In *Fletcher*, the High Court remitted the matter to the AAT to determine whether, on a common sense assessment of all the evidence, the contractual arrangements to which the partnership became a party were intended and expected to run their full course. The Tribunal noted (at 92 ATC 2052; 23 ATR 1075):

'To an objective observer, a consideration of the scheme suggests that its major advantage was the tax deductions in the first 10 years ... Given the likely increase in the applicants' assessable income at that time, we are satisfied that their dominant purpose in entering into the scheme was the significant tax deductions available in these early years ... (I)f the scheme were allowed to run its full course, the last five years would result in assessable income which would greatly exceed adjusted interest outgoings. The result would be very substantial partnership net income, representing assessable income in the hands of the partners which, if actually derived, would far exceed the comparatively small projected "cash surplus" of the partnership in each of the last five years.' As the High Court noted:

> "If an average marginal income tax rate of 30 per cent is assumed, the total tax payable by the taxpayers as a result of their shares of the partnership net income would, if the agreements were allowed to run their full course, exceed the partnership's projected 'cash surplus' by well over $100,000 in each of the last five years." '

45. Finally, at 92 ATC 2052; 23 ATR 1076, the Tribunal stated:

'In the result, applying a common-sense assessment of all the evidence leads to the conclusion that on the balance of probabilities: (i) the scheme now under review was constructed on the premise that the various agreements would be terminated at some time before the first 10 years had elapsed; (ii) the taxpayers' *advisers* were fully aware of the consequences that would flow from a failure to terminate these agreements at some time before the last five years; (iii) the dominant purpose of the *applicants* in entering into this scheme was directed to minimising a possible increasing tax liability arising from profitable subdivision sales; (iv) even though the applicants may not have understood the subtler details of the arrangement by which the adverse consequences which would be incurred by year 11 if the agreements were to run their full course could be avoided, all the participants intended and expected that the arrangement to which the partnership became a party would come to an end once the tax benefit had been exhausted.'

46. These kinds of features are not inherent in the usual kind of negatively geared investments. It is generally not the case in commonly encountered negative gearing arrangements that they are intended to, and are structured on the basis that they have a defined and pre-ordained period to run. Whilst certainly a consideration, the **major** advantage of such an arrangement is not usually the tax

deductions available for interest outgoings. Accordingly, and in the usual case, a commonsense or practical weighing of all the factors could be expected to lead to the conclusion that the relevant interest expense is properly to be characterised as genuinely, and not colourably, incurred in gaining or producing assessable income or in carrying on a business for that purpose, and will fall entirely within either the first or second limbs of subsection 51(1).

Examples

Example 1

47. Mr Chancer receives a prospectus inviting participation as an investor in a cattle breeding scheme. The scheme promoters arrange for each investor to borrow $100,000 for the right to participate in the scheme. The interest is payable over the life of the scheme and is financed by a 'round robin' of cheques. Under the scheme, substantial losses are to arise for investors in the first 5 years, small losses in the next 6 years and large net incomes over the final 5 years.

48. Over the 16 year agreement the total of the anticipated assessable income is expected to exceed the total outgoings of interest. However, every investor has the option of terminating his or her participation before the large net incomes arise without incurring personal liability on any outstanding borrowings.

49. Mr Chancer derives considerable assessable income from other sources and considers the investment to be excellent in view of the tax deductions offered by the promoters.

50. A commonsense weighing of all the relevant evidence indicates that the scheme is not expected to run its full course and Mr Chancer's dominant purpose in entering the scheme is to incur the outgoings in order to minimise his tax liability. In the circumstances, as the total anticipated allowable deductions will far exceed the total assessable income reasonably expected to be derived until the time of termination, the excess of the outgoings over the assessable income will not be deductible under subsection 51(1).

Example 2

51. If the arrangement outlined in **Example 1** provides Mr Chancer with no opportunity of leaving the scheme until its termination, the interest payments will be fully deductible under subsection 51(1). This is so because, over the 16 year life of the agreement, the total of the anticipated assessable income is expected to exceed the total outgoings of interest.

Example 3

52. If it is expected that Mr Chancer will terminate his participation during the final 5 years of the scheme as described in **Example 1**, the interest payments might still be deductible under subsection 51(1). The deductibility of the interest in this situation will depend on whether Mr Chancer is expected to leave the scheme at a stage after the total of the assessable income derived under the arrangement exceeds the total outgoings of interest.

Example 4

53. Ms Skeam borrows $100,000 from her spouse, who does not earn sufficient assessable income to be taxable, at 17% interest in a non-arm's length transaction to finance the purchase of a rental property. The commercial rate of interest is 10%. Ms Skeam's subjective purpose in agreeing to pay the higher rate of interest is to obtain a greater tax deduction than if she makes the borrowing at 10% and to secure a financial benefit for her spouse to the extent of the excess of 7% as well as to earn assessable income from the rental property.

54. Ms Skeam would only be allowed a deduction under subsection 51(1) at the rate of 10% for the period of the loan.

Example 5

55. After reading *Fletcher's* case, Ms Skeam decides to borrow the money to buy the property at a commercial rate of interest of 10%. She borrows $70,000 of the purchase price of $100,000 with the intention of continuing to rent the property at least until the loan is fully repaid.

56. The interest payments will be deductible under subsection 51(1) while the property produces rent as the interest expenditure can be wholly characterised by reference to the actual or expected production of assessable income.

Example 6

57. Gadfly Pty Ltd is in the business of selling shoes. The majority of its directors are dissatisfied with the performance of its managing director. As a consequence, they cause the company to resolve to pay him $100,000 in order to terminate his contract of employment, the terms of which entitle him to a payment of $20,000 a year over five

years. The only object which the company has in mind in making the expenditure is to increase profitability and efficiency in the conduct of its business.

58. Gadfly Pty Ltd's purpose in incurring the expenditure stamps it as expenditure of a business of an income-earning kind, deductible under subsection 51(1).

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- FC of T v. Roberts & Smith 92 ATC 4380; (1992) 23 ATR 494
- FCT v. Snowden & Willson Pty Limited (1958) 99 CLR 431
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  Fletcher & Ors v. FC of T 92 ATC 2045; AAT Case 5489A (1992) 23 ATR 1068
- Kidston Goldmines Ltd v. FC of T 91 ATC 4538; 22 ATR 168
- Magna Alloys & Research Pty Ltd v. FC of T 80 ATC 4542; 11 ATR 276
- Ronpibon Tin NL and Tongkah Compound NL v. FC of T (1949) 78 CLR 47; 8 ATD 431