

IT 107 - Legal expenses: commercial television station - application of section 51(1)

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TAXATION RULING NO. IT 107

LEGAL EXPENSES : COMMERCIAL TELEVISION STATION -
APPLICATION OF SECTION 51(1)

F.O.I. EMBARGO: May be released

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LEGAL EXPENSES

51(1)

BROADCASTING LICENCE

PREAMBLE

The following principles were seen to have emerged from the decision of No. 1 Board of Review in the reference reported at 69 ATC Case A61; 15 CTBR(NS) Case 39.

FACTS

2. In the Board of Review decision the taxpayer, a television broadcasting company, incurred legal expenses in connection with a High Court action as a result of which certain 'further conditions' proposed by the Postmaster-General to be attached to the taxpayer's licence were held to be invalid.

3. The effect of the 'further conditions' would have been to prevent the taxpayer from denying to commercial television stations access to certain programmes over which the taxpayer had exclusive rights. This in turn would have made the taxpayer's programmes less attractive to advertisers from whom it derives assessable income.

4. For the Commissioner it was argued that the legal expenses were incurred to avert a threatened subtraction from the rights it enjoyed under its licence - a threatened diminution of its profit-yielding subject in that the proposed 'further conditions' would no longer permit the most lucrative modus operandi. The main cases relied on were the Sun Newspapers Case (1938) 61 CLR 337, Broken Hill Threatres Ltd v FC of T (1952) 85 CLR 423 and the Fairfax Case (1959) 101 CLR 30.

5. The Board distinguished those cases on the ground that they dealt with the buying off of competition. In the present case, it said the taxpayer's expenditure neither eliminated nor prevented competition. Further it saw the 'further conditions' as threatening not the existence of the taxpayer's licence by the revenue functions the licence authorised. If the 'further conditions' had ever become operative they would have affected the way in which the taxpayer conducted its day-to-day affairs but they in no sense threatened the continued existence of the business it was licenced to carry on. Hence in the Board's opinion the legal expenses fell within the second, if not the first, limb of s. 51(1) and were not of a capital nature.

RULING 6. This decision shows a broad, practical approach to s.51(1) and indicates that deductions which ought to be set off in all fairness as losses or outgoings arising in the ordinary course of the day-to-day running of a business will not lightly be disallowed as capital.

COMMISSIONER OF TAXATION