IT 2223 - Income tax : travel expenses - apportionment to exclude domestic or private expenditure

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TAXATION RULING NO. IT 2223

INCOME TAX : TRAVEL EXPENSES - APPORTIONMENT TO EXCLUDE DOMESTIC OR PRIVATE EXPENDITURE

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1194268	LIVING EXPENSES - APPORTIONMENT TO EXCLUDE DOMESTIC OR PRIVATE EXPENSES.	51(1)
	TRAVELLING EXPENSES APPORTIONMENT TO EXCLUDE DOMESTIC AND PRIVATE EXPENSES	

PREAMBLE Where a taxpayer travels for income earning purposes and is accompanied by his wife and/or family (whose travel purposes are private or domestic in nature) it is the practice of the Commissioner to allow a deduction for accommodation based on the usage by the taxpayer of the accommodation obtained, rather than on a "marginal cost" basis. For example, where a taxpayer attends a conference accompanied by his wife, 50% of accommodation expenses are allowed, in appropriate circumstances, as a deduction rather than the amount it might have cost the taxpayer to obtain single accommodation. This approach was rejected by Board of Review No. 3 in a decision reported as Case R2, 84 ATC 106, Case 53, 27 CTBR (NS) 466 where the Board allowed a deduction for accommodation expenses calculated on the "marginal cost" basis.

2. The Commissioner does not accept that the approach taken by Board No. 3 should have general application. In a more recent decision reported as Case S80 85 ATC 589, Case 88 28 CTBR (NS) 684, Board of Review No. 1 has referred to, but declined to follow Case R2, preferring to base its decision on the reasoning of the High Court in FCT v Western Suburbs Cinemas Ltd (1952) 86 CLR 102 and Ronpibon Tin NL and Tongkah Compound NL v FCT (1949) 78 CLR 47.

FACTS 3. The taxpayer, an academic and music critic, was granted a Special Studies Programme (sabbatical leave) to undertake research at a European university. He was in Europe for six and half months and was accompanied by his wife and three young children for five of those months. He leased an apartment to accomodate himself and his family and claimed as a deduction 2/3 of the total rental cost. The taxpayer argued that he would have had to lease at least a five room apartment

if he had been there on his own and thus he was entitled to claim a deduction under sub-section 51(1) of 2/3 of the cost of renting the seven room apartment.

4. The Commissioner allowed a deduction of 1/3 of the rental costs, apportioning the usage of the rental expense as 1/3 to the taxpayer, 1/3 to his wife and 1/3 to the children. The Commissioner treated the cost of the latter 2/3 of the usage as private or domestic in nature and thus not deductible under the terms of sub section 51(1). The taxpayer sought a reference to the Board of Review.

5. Board of Review No. 1 confirmed the Commissioner's approach, stating that the apportionment must be based on actual and not notional facts, that is, on what happened rather than on what might have happened - FCT v Western Suburbs Cinemas Ltd (supra). In addition, the apportionment of expenses which serve income producing and private or domestic purposes indifferently must be a fair and reasonable one - Ronpibon Tin NL v FCT (supra). The "marginal costs" approach was expressly rejected by members of the Board.

RULING 6. The Commissioner will continue to apportion expenses on an actual use basis. An apportionment based on marginal cost will not be accepted.

COMMISSIONER OF TAXATION
2 December 1985

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