


IT 230 - Leasing of cattle - deductibility of costs

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TAXATION RULING NO. IT 230

LEASING OF CATTLE - DEDUCTIBILITY OF COSTS

F.O.I. EMBARGO: May be released

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LIVESTOCK

51(1)

LEASING OF CATTLE

CATTLE LEASING SCHEME

CARRYING ON A BUSINESS

PREAMBLE

The following advice was issued as a result of a decision of the Supreme Court of Victoria in *Hanlon v FC of T*, 81 ATC 4617, 12 ATR 540.

2. The decision of the Court allowed the taxpayer's appeal against the decision of Board of Review No.2 reported as 78 ATC Case K51; 22 CTBR Case 71. The Board had upheld the Commissioner's decision to disallow the taxpayer's claim for a deduction of \$8833, being his one-third share of a "once-only" fee paid in respect of an arrangement to lease the services of one pure-bred Simmental heifer located in New Zealand. The Board held, *inter alia*, that the sum was not incurred in terms of section 51(1) in carrying on a business either alone or together with others.

RULING

3. Following is a brief recital of the facts and comments on the reasons for the judgment.

4. On 29 June 1976 the taxpayer with two others entered into an agreement as lessees whereby a pure-bred Simmental heifer and certain cows were leased for the purpose of obtaining four pure-bred Simmental calves following a subsequent embryo transplant from the Simmental to the other leased cows. The lease fee covered all costs and required the lessor to deliver the calves to Australia. It was the intention of the lessees to utilise the accelerated breeding technique to develop a pure-bred Simmental herd. The three lessees, together with others, collectively formed a syndicate named Preferred Simmental Stud Company. At 30 June 1976 the syndicate had neither executed a written partnership agreement nor determined the legal rights and obligations of the individual members. A written agreement was entered into in the following year.

5. In the year ended 30 June 1976, in respect of the proposed cattle venture, there were only negotiations with the lessor company and also the execution of the lease agreements and loan agreements with a company associated with the lessor company. In the year ended 30 June 1977, due to the collapse of the group controlling the lessor company, the obligations under

the original lease and loan agreement were taken over by a company associated with the syndicate. The Commissioner had accepted that the taxpayer was engaged in primary production activities in the 1977 and subsequent years.

6. At the hearing of the appeal, counsel for the Commissioner submitted that the only question before the Board was whether the taxpayer's activities constituted a "business" and this was a question of fact. As such, the Board's decision did not involve a question of law upon which an appeal could be founded.

7. His Honour held that the taxpayer was a member of a syndicate which existed at 30 June 1976 and that he had deliberately committed himself to a plan, through the syndicate, for the establishment of a herd. His Honour found that the taxpayer's involvement was not confined to his rights under the lease and that the acquisition of the calves was a necessary first step in the achievement of the broader purpose of development of a herd. In addition, the appeal was held to involve a question of law.

8. It would appear that His Honour did not address himself to the question whether the activities in year ended 30 June 1976 constituted a business (cf *Ferguson v FC of T* 79 ATC 4261, 9 ATR 873) nor was the true legal character of the lease determined (cf 80 ATC Case M2; 23 CTBR Case 81) leaving open the Board's finding in that case that the lease was in fact a contract of purchase.

9. The decision is seen as one turning on its own facts and should only be applied in cases where the facts are identical or very similar.

COMMISSIONER OF TAXATION