

EXCHANGE GAINS - TAXATION:

Pattison (HMI Inspector of Taxes) v. Marine Midland Limited  
House of Lords. 8 December 1983. The Times, 10 December 1983.

The principles concerning the application of taxation law in Australia to taxation gains and losses have been established with some precision by the High Court in AVCO v. Commissioner of Taxation (1982) 57 ALJROO. In that decision it was held that where a finance company borrowed monies for the purposes of on-lending to its clients, exchange gains and losses on those borrowings would normally be on revenue account and therefore assessable or deductible. The Supreme Court of New South Wales sought to extend this principle to that of a trading company which in the Court's view had borrowed to provide day-to-day running expenses in its business: Hunter Douglas Limited v. Commissioner of Taxation [1982] ATC 4550. However, the Federal Court found the taxpayer had borrowed the funds to strengthen its profit earning structure and therefore losses were not deductible being on capital account: [1983] ATC 4562. In the meantime, an interesting case in England has involved a company which operated in the Eurodollar market in London, borrowing in US dollars and lending in dollars. At the end of each month the profit or loss from its various currency dealings, including those in the United States' dollars, were translated into Sterling at the prevailing exchange rate. However there was never any conversion of the money into Sterling, the translation was only notional. This was accepted as the proper method of accounting in international banking. The Court of Appeal held that the gains resulting from the notional conversion were not assessable, and this has recently been confirmed by the House of Lords: The Times, 10 December 1983. The case is of particular importance to Australian Banks and Finance Houses who may be expected to benefit from the recent substantial relaxation of exchange control. In particular, if the proposals recently made for the development of an International Financial Centre in Australia are realised, these institutions will be particularly concerned as to their taxation liabilities, even if a particular taxation regime is established. There is of course some difficulty in applying British taxation decisions to Australia because of the particular regime for the establishment of taxable income in the Australian legislation. The decision, however, bears close scrutiny by banks and financial houses.