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Announcements

Income Tax Law, Deductions Part II: Feasibility expenditure, the TrustPower case, timing, and losses: papers by Professor John Prebble. (TrustPower Limited v Commissioner of Inland Revenue is the subject of the first paper in this issue, "Deducting Expenditure to Assess the Feasibility of Constructing Capital Assets". An appeal in the case is set down for March 8, 9, and 10 2016 before the Supreme Court).

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Deductibility of Expenses Incurred in a Loss-Making Business

[John Prebble](#), Victoria University of Wellington - Faculty of Law, Institut für Österreichisches und Internationales Steuerrecht, Wirtschaftsuniversität Wien, University of Notre Dame Australia - School of Law

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[John Prebble](#), Victoria University of Wellington - Faculty of Law, Institut für Österreichisches und Internationales Steuerrecht, Wirtschaftsuniversität Wien, University of Notre Dame Australia - School of Law

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"Deducting Expenditure to Assess the Feasibility of Constructing Capital Assets: Opinions from Inland Revenue, the High Court, and the Court of Appeal"

Victoria University of Wellington Legal Research Paper No. 24/2016

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The TrustPower cases in the High Court and Court of Appeal addressed a question on the capital/revenue divide: in calculating its income, could the taxpayer deduct expenses incurred on feasibility studies and resource consents for projected electricity-generating dams and wind farms?

Inland Revenue Interpretation Statement IS 08/02, Deductibility of Feasibility Expenditure, influenced, even dictated, the approach of both Commissioner and taxpayer. Nevertheless, the Statement was an

elephant in the room, not mentioned in the judgments in either court. In contrast, in granting leave to appeal, the Supreme Court has questioned "the proposition that the Interpretation Statement is correct in treating 'feasibility expenditure' as being on revenue account".

In the High Court, Andrews J introduced several unorthodox ideas and processes of reasoning. They included the propositions (though Andrews J did not use precisely these words): (i) that expenditure on feasibility studies to weigh up whether to acquire a capital asset is deductible as a matter of revenue; and, it seems, (ii) that expenditure on or in connexion with a capital asset is deductible as revenue expenditure if one has not made a commitment to buying or constructing the asset. This article argues that authority does not support those propositions. Indeed, the Court of Appeal reversed a number of Andrews J's holdings. The Supreme Court hearing starts on March 8, 2016.

"Deductibility of Expenses Incurred in a Loss-Making Business"

Recent Law, p. 57, 1983

Victoria University of Wellington Legal Research Paper No. 25/2016

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A comment on the case of *Grieve v Commissioner of Inland Revenue* (1982) 5 NZTC 61,145. The taxpayer had run a loss-making business which he had continued to deduct from other income. Eventually, the Commissioner decided to disallow further deductions. The court upheld the Commissioner's decision, finding that a reasonable prospect of a profit must exist. The decision was upheld on appeal in the case of the same name, (1984) 1 NZLR 101.

"The Time Element in Deductions Cases"

Victoria University of Wellington Law Review, Vol. 13, pp. 79-93, 1983

Victoria University of Wellington Legal Research Paper No. 26/2016

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Section 104 of the Income Tax Act 1976 sets out the test for deductibility from assessable income. The article focuses on the issue of time in the test. First, at what stage can an item of "expenditure" be said to have been "incurred" by the taxpayer? Can expenses be estimated or spread forward into the future? Secondly, it considers the problem of the expense that is so removed in time from the income-producing activity by which it is occasioned that it becomes questionable whether it is deductible at all.

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Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

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