

***IT 2307 - Income Tax : Assessability of lump sum payment made under contract to play football: covenant in contract that taxpayer not engage in competitive footrunning during term of contract.***

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TAXATION RULING NO. IT 2307

INCOME TAX : ASSESSABILITY OF LUMP SUM PAYMENT MADE UNDER CONTRACT TO PLAY FOOTBALL: COVENANT IN CONTRACT THAT TAXPAYER NOT ENGAGE IN COMPETITIVE FOOTRUNNING DURING TERM OF CONTRACT.

F.O.I. EMBARGO: May be released

REF

H.O. REF: 80/6213

DATE OF EFFECT: Immediate

B.O. REF:

DATE ORIG. MEMO ISSUED: 25 March 1986

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1137397	ASSESSABLE INCOME	25 (1)
	FOOTBALLER	26 (e)
	LUMP SUM PAYMENT	

PREAMBLE

This ruling deals with the decision of Taxation Board of Review No. 3 reported as Case R123, 84 ATC 791; Case 4 28 CTBR 13.

FACTS

2. Since schooldays the taxpayer was an outstanding footballer and runner. In 1971 he became a professional runner and in 1976 he abandoned senior football in Melbourne to concentrate on his running career.

3. In early 1978 the taxpayer won a major running race. Shortly thereafter he entered into a contract to play professional football with a V.F.L. Club. Under the terms of the contract the taxpayer agreed, inter alia, "not to engage or participate in any track or other running professionally or as an amateur, whether for reward or not". A further term of the contract provided that he would tie himself to the club and not engage in activities likely to incapacitate him from playing football.

4. The taxpayer received a lump sum payment of \$11,000 under the contract which sum was, on assessment, included as income for the year ended 30 June 1978. The taxpayer objected on the basis that the payment was made in consideration for his agreeing not to pursue his running activities during the term of the contract and this constituted a capital payment. The objection was disallowed and the taxpayer subsequently sought a reference to a Board of Review.

5. Evidence before the Board established that sign-on fees for contracted V.F.L. players are the norm; however a figure of \$11,000 was unusual and in excess of that normally paid. The Board accepted the taxpayer's evidence that he demanded payment by way of compensation for the sterilization of his promising foot-running career and as a result, the sum of \$11,000 was agreed upon based on an estimation of potential

prize money foregone over the relevant period. There was no evidence to suggest the payment was related to anything other than his foot-running career. Accordingly the Chairman and Dr. Gerber held that the sum of \$11,000 was a payment for the sterilization of the taxpayer's professional foot-running career and did not constitute assessable income. Dr Beck construed the contract to include a distinct restraint on the taxpayer's foot-running and as such constituted a restrictive covenant. On the authority of *Beak v Robinson* [1943] A.C. 352 he concluded that consideration for a restrictive covenant is not assessable income.

6. The Commissioner initially sought to appeal from the decision of the Board on the basis that the payment did include some factor relating to a sign-on fee which, in the view of the Commissioner, constitutes assessable income. However, this approach was contrary to the findings of the Board on the evidence before it and with the effluxion of time no better evidence was available to support the Commissioner's contention on appeal. Accordingly, the appeal was withdrawn.

RULING

7. The Commissioner regards the decision as one confined to its own peculiar facts and evidence. Lump sum payments made to sportsmen under 'sign-on' agreements are considered, in the absence of evidence to the contrary, to constitute assessable income in the hands of sportsmen and should be treated as such.

COMMISSIONER OF TAXATION

23 May 1986

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