

IT 2373 - Income tax : alienation of income

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TAXATION RULING NO. IT 2373

INCOME TAX : ALIENATION OF INCOME

F.O.I. EMBARGO: May be released

REF H.O. REF: 83/312-6 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

I 1177198 ALIENATION OF INCOME 260
Part IVA

OTHER RULINGS ON TOPIC : IT 2330

PREAMBLE It has been decided that no appeal will be lodged against an unreported decision of Taxation Board of Review No.1, dated 5 June 1986. The majority of the Board held that the taxpayer was not assessable upon amounts received by his company for services rendered by him.

FACTS 2. In 1974 the taxpayer entered into a three year employment contract with an organisation. In 1977 the managing director of the organization persuaded the taxpayer to stay by entering into an arrangement whereby a "contract fee" was to be paid by the organization for the taxpayer's services and the organization was to make the payments to the taxpayer's family company. The family company was to employ the taxpayer and provide his services to the organization.

3. From late June the taxpayer's services were provided exclusively to the organization. In 1983 the arrangements between the organization and the taxpayer's company were formally documented. A contract codified the previous oral arrangements. However the fee was increased and the taxpayer provided a personal guarantee to the organization.

4. In reaching its decision the majority held that the income represented by the moneys paid by the organization in order to secure the benefit of the services of the taxpayer was paid pursuant to a contractual arrangement made with the taxpayer's family company. All of the amounts in question were paid to the family company as the party directly entitled thereto. The family company received the moneys and derived them. The majority also held that the arrangement was not void under section 260 as it could be explained as an ordinary business dealing having regard to all the circumstances of the case. Part IVA was held not to apply as there was no post 27 May 1981 arrangements, the 1983 contract being considered to be simply part of the 1977 arrangement.

RULING 5. On the evidence presented to and upon which the Board

based its decision the case emerges as one to which paragraph 40 of Taxation Ruling No. IT 2330 applies. The paragraph recognizes that a person such as the taxpayer in this reference, who derives income from rendering professional services may wish to conduct his or her activities in corporate form. In these circumstances where incorporation is explicable as an ordinary business or commercial step to take, does not result in the splitting of income and the company is conducted along normal business lines it is acceptable for income tax purposes.

COMMISSIONER OF TAXATION
6 NOVEMBER 1986

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