# *IT 2193 - Income tax : compensation for loss of earning capacity*

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# TAXATION RULING NO. IT 2193

## INCOME TAX : COMPENSATION FOR LOSS OF EARNING CAPACITY

F.O.I. EMBARGO: May be released

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| I 1194205 | ASSESSABLE INCOME<br>COMPENSATION PAYMENTS | 25(1) |

PREAMBLE In FCT v Slaven, 84 ATC 4077; 15 ATR 242, the Federal Court upheld a decision of the Supreme Court of Victoria, Slaven v FCT, 83 ATC 4387; 14 ATR 431, that certain payments made to the taxpayer under the Motor Accidents Act (Vic) 1973 were not liable to income tax.

2. The decision was concerned with compensation payments amounting to $4,360 received by the taxpayer from the Motor Accidents Board ("the Board") under section 25 of the Motor Accidents Act. The question before the Court turned on whether amendments made to the Motor Accidents Act in 1979 were effective to achieve their stated purpose of freeing the compensation payments from income tax and of overcoming the decision in Tinkler v. FCT 79 ATC 4641; 10 ATR 411.

3. Prior to the 1979 amendments the Motor Accidents Act provided that, where a person injured as a result of a motor accident suffered a "loss of income" in the capacity of employee by reason of the injury, he or she was entitled to apply under the Act for payments in respect of the loss of income. This is what happened in the Tinkler Case and it was held there that because of their regularity and the fact that they were made in substitution for income which could otherwise have been earned, the payments represented assessable income.

4. In 1979 the Motor Accidents Act was amended in an endeavour to alter the character of payments made to persons injured in motor accidents. As a result of the amendments the amount awarded to an injured person is no longer described as a payment for loss of income or in substitution for income which would otherwise have been earned by the injured person - it is consistently described throughout the Motor Accidents Act as compensation "for the deprivation or impairment of earning capacity" which the injured person has suffered.

5. Although the maximum amount which can be paid to an injured person under the amending legislation, $20,800, remains the same as it was prior to the change in the law, the actual amount

which may be paid is determined by the Board having regard to all relevant matters and in particular to:-

(a) the nature of the injury;

(b) the nature of the trade, business, profession or vocation in which the person is engaged or likely to be engaged; and

(c) medical evidence relating to the injury.

In addition the Board, in determining an adequate amount of compensation to be paid to an injured person, must have regard to the loss of earnings actually suffered and to the likely loss of future earnings. Under the Motor Accidents Act as amended there is no statutory requirement that payments be made on a regular periodic basis although the Board has a discretion to make payment "at such time and by such instalments" as it determines.

6. In the Slaven Case the taxpayer received five irregular payments totalling $4,360 as compensation in respect of the deprivation or impairment of her earning capacity suffered as a result of a motor vehicle accident which left her unable to work for a period of nine months.

7. The Federal Court accepted that the 1979 amendments to the Motor Accidents Act achieved a fundamental difference in the nature of a payment made to an injured person. The Court found that the essential character of payments following the amendments is compensation for loss or impairment of earning capacity - they are no longer payments in substitution for lost earnings.

RULING

8. In reaching its conclusion that the amounts involved were not liable to income tax the Court relied on the following factors:-

(i) "the purpose of a statutory payment, as disclosed by the terms of the statute itself, must be a powerful, though not conclusive, aid to the determination of the character of the payment";

(ii) earning capacity is a capital asset;

(iii) "the Board's task is essentially to determine the compensation payable to a person having regard to the deprivation or impairment of his earning capacity";

(iv) "the exercise in which the Board is required to engage by the Act is not merely one of assessing lost earnings. It is in fact an exercise in valuation".

9. The decision should be applied to other similar payments made by the Motor Accidents Board of Victoria. In addition, the

decision will extend to payments made by other compensation boards where the payments made are in the nature of compensation for deprivation or impairment of earning capacity.

10. Motor Accident Boards similar to that in Victoria presently exist in the Northern Territory and Tasmania. The Northern Territory Board is established under the Motor Accidents (Compensation) Act (NT) and that Act authorises payments in similar terms to the Victorian Act. The decision of the Federal Court will apply to payments under the Northern Territory Act. Payments made pursuant to the Tasmanian Act - the Motor Accidents (Compensation and Liabilities) Act (Tas) - are in a form to which the decision in Tinkler v F.C. of T (supra) applies and are to be included in the assessable income of the recipient.

11. In other states and the Australian Capital Territory compensation payments arising from motor vehicle accidents are subject to common law. The assessability of payments made in these jurisdictions is to be determined from the terms of the decision governing the payments.

COMMISSIONER OF TAXATION
12 September 1985