# *IT 2295 - Interest on overpayments of tax : objections against income tax assessments*

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TAXATION RULING NO. IT 2295

INTEREST ON OVERPAYMENTS OF TAX : OBJECTIONS AGAINST INCOME TAX ASSESSMENTS

F.O.I. EMBARGO: May be released

REF H.O. REF: S104/1/55 P1 DATE OF EFFECT:

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

F.O.I. INDEX DETAIL

| REFERENCE NO: | SUBJECT REFS: | LEGISLAT. REFS: |
|---|---|---|
| I 1078208 | INTEREST ON OVERPAYMENTS OF TAX<br>VALIDITY OF OBJECTIONS | 185 ITAA;<br>TAXATION (INTEREST ON OVERPAYMENTS) ACT |

PREAMBLE The Taxation (Interest on Overpayments) Act operates with effect from 14 February 1983. It provides for the payment of interest to a taxpayer where an objection lodged by a taxpayer is allowed or partly allowed either by the Commissioner of Taxation or by a Taxation Board of Review or by a decision of a Court and, in the result, there is found to be an overpayment of tax which is to be refunded to the taxpayer or applied against any liability of the taxpayer to the Commonwealth.

2. The Act does not apply to all overpayments of tax nor does it apply to all refunds. It is limited to overpayments resulting from decisions on objections.

3. Section 3 of the Act lists the range of objections to which the Act applies. It includes objections against assessments, against determinations, against refusal to make amended assessments in certain cases, against refusal to issue certificates of exemption from withholding tax, etc.

4. As a practical matter it is expected that most of the objections giving rise to an entitlement to interest will be objections against assessments of income tax, i.e. objections under section 185 of the Income Tax Assessment Act. The section contains certain procedural requirements, i.e. an objection must be in writing and posted to or lodged with the Australian Taxation Office within 60 days of service of the notice of assessment to which the objection relates. The requirements are largely self-explanatory. Section 185 also contains two elements which are of a more substantive nature, i.e. an objection can only be taken to or against an assessment and that the grounds of objection must be stated fully and in detail. It is the two substantive elements with which this Ruling is concerned.
Objection to or against Assessment

5. The term "assessment" is defined in section 6 of the Income Tax Assessment Act to mean:-

(a) the ascertainment of the amount of taxable income and of

the tax payable thereon; or

(b) the ascertainment of the amount of additional tax payable under a provision of Part VII.

6. In the light of the definition of the term "assessment" an objection to an assessment must relate to:

(1) some element in the calculation of taxable income, i.e. that a particular receipt was of a capital nature, that a particular receipt was exempt income, that a particular outgoing was an allowable deduction, etc; or

(2) some element in the calculation of the tax payable, i.e. that the rate of tax applied was incorrect, that a concessional rebate for a spouse had not been allowed, etc; or

(3) that the amount of additional tax under Part VII ought to be varied, i.e. that the circumstances giving rise to the additional tax were such that no additional tax was warranted or that it should have been remitted to a greater extent.

7. A notice of assessment which issues to a taxpayer will generally contain information beyond what is comprehended in the definition of "assessment". It may contain details of provisional tax, tax instalment deductions, prescribed payments credits and other credits provided for in the Income Tax Assessment Act. It may also contain details of arrears of tax outstanding including additional tax accruing in respect of the late payments. None of the items mentioned are within the scope of an "assessment" as defined and cannot be made the subject of an objection against an assessment.

8. It should be noted that a taxpayer is not prevented from objecting to an assessment notwithstanding that the assessment was based upon the taxable income disclosed in the return lodged. It may occur that a taxpayer, after receiving notice of assessment, realises, for example, that a claim for income tax deduction ought to have been made for a gift to an institution specified in paragraph 78(1)(a) of the Income Tax Assessment Act. It is open to the taxpayer to protect his rights by lodging an objection on the grounds that the gift was an allowable income tax deduction and that his taxable income should be reduced accordingly. In similar vein, it is open to a taxpayer to object to an assessment on grounds which will increase the taxable income and tax payable; see Henderson v. FCT 69 ATC 4049 : 1 ATR 133.

Fully and in detail

9. In this context it is appropriate to repeat observations made by the High Court many years ago. They are as relevant today as when they were made. In R. v. D.C. of T. (W.A.) ex parte Copley (1923) 30 ALR 86, the High Court had to consider whether certain letters constituted valid objections under

sub-section 37(1) of the Income Tax Assessment Act 1915-1918. Despite some differences in the wording of sub-section 37(1) as compared with the present section 185, the observations of the Court apply with equal force to section 185. At page 87 Knox C.J. said:

> "I think it is effective notice of objection under the Act if the written communication is expressed in words that are reasonably calculated to convey to the understanding of the person to whom it is addressed (1) that the taxpayer contends that the assessment is not in accordance with law; and (2) the grounds on which that contention is based."

Higgins J. at page 87 made these observations:

> "The word 'objection' used in the section is not technical, and we are to apply its ordinary meaning. The section does not say that the word 'objection' must be used, and, in my opinion, if the fault alleged is stated directly and not inferentially stated in such a manner that the Commissioner may know in what respect his assessment is attacked that is enough. The word 'submit' as used in the letter seems to me to include an objection but with the addition of deference and courtesy."

At page 88 Starke J. said:

> "It has been laid down in this Court that an objection need not be in formal language, or in language that lawyers would adopt, and that must be so, because the Act has frequently to be acted upon by persons who have no knowledge of the law and who are very often a considerable distance from legal assistance."

10. Subsequently in H.R. Lancey Shipping Co. Pty. Ltd. v. F.C. of T. (1951) 9 ATD 267 Williams J. expressed himself in similar vein. He said:

> "It is the practice of the respondent to forward an adjustment sheet with the assessment containing information and alterations and additions made to the taxpayer's return but is not bound to forward such a sheet. The taxpayer who receives such a sheet is generally in a better position to state fully and in detail the grounds of his objection to the assessment so that the practice is to be commended. If such a sheet is not sent to the taxpayer he may have a difficulty in understanding the basis of the assessment. But he must comply with the Act. The grounds of objection need not be stated in legal form, they can be expressed in ordinary language, but they should be sufficiently explicit to direct the attention of the respondent to the particular respects in which the taxpayer contends that the assessment is erroneous and his reasons for the contention."

11. It is unnecessary to expound on what the High Court has said. In practice it will be the case that many objections are lodged by tax agents, accountants or solicitors and the grounds

of objection will clearly be stated fully and in detail. On the other hand, many taxpayers personally prepare and lodge their own income tax returns and generally attend to their own income tax affairs. They are not to be discriminated against or penalised because they may not use precise terminology in expressing dissatisfaction with an assessment.

12. As a general rule, a letter or a document from a taxpayer or his authorised agent which indicates fairly that an assessment is wrong in a particular respect and the reasons for its being wrong, should be treated as satisfying the requirement of being stated fully and in detail. For example, letters or documents along the following lines should be accepted as valid objections, all other requirements of section 185 being satisfied:

(a) I forgot to claim a rebate for my spouse, the relevant details being ..... Would you please amend my assessment to allow the claim.

(b) I request the further remission of additional tax imposed for incorrect return in my 1984 assessment for the following reasons ....

(c) I cannot understand why you adjusted the claim for my wife. Would you please explain the reason for the adjustment.

13. Sometimes it may be necessary to have regard to the information supplied by the taxpayer in his return of income in order to determine whether an objection has been stated fully and in detail. For example, a taxpayer may claim in his return of income an income tax deduction for protective clothing. The claim will be inserted in the return form under the item which refers to any other deductions incurred in gaining or producing the assessable income. If the claim is disallowed and the taxpayer subsequently writes in stating the claims or the amounts involved were wrongly disallowed, the letter should be accepted as an objection. Against the background of the information in the return form, the letter can only be construed as a claim by the taxpayer that the taxable income shown on the notice of assessment is incorrect and that it should be reduced by the amount of the claim because the amount was incurred in gaining or producing the assessable income.

14. Although the observations of the High Court make it clear that a taxpayer is not restricted to any particular form of words in lodging an objection against an assessment, it is equally clear from other decisions of the High Court that vague or general challenges to an assessment would not qualify as valid objections. A statement, for example, that an assessment is wrong in fact and law is not considered to be a statement of grounds fully and in detail. Sometimes letters from taxpayers are really complaints against the taxation system generally - they are not to be treated as objections.

15. Clearly, it is not possible to envisage all situations which may arise in practice. Wherever practicable taxpayers who

seek advice about lodging objections should be referred to the specimen form of objection in the First Schedule to the Income Tax Regulations. If any doubt arises in a particular case, as to whether a letter from a taxpayer expresses fully and in detail dissatisfaction with an assessment, the doubt should be resolved in favour of the taxpayer.

COMMISSIONER OF TAXATION
20 May 1986