

IT 2316 - Income tax: distribution of partnership profits and losses

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INCOME TAX: DISTRIBUTION OF PARTNERSHIP PROFITS AND
LOSSES

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I 1209460	PARTNERSHIPS	90
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PREAMBLE In a recent unreported decision Taxation Board of Review No.1 had to determine to what extent partners of a partnership were entitled to share profits and losses of the partnership.

4. At the hearing the Commissioner argued that, although a partnership existed for income tax purposes, there was not a partnership at general law. In rejecting this the Board held that a partnership existed at general law and that the distribution of rental losses must be regulated by the terms of the written partnership agreement. The Board considered that the evidence adduced established that it had always been the intention of the parties to purchase the rental properties as partnership assets subject to the terms of the partnership agreement.

RULING 5. It is considered that the finding of the Board was open to it on the facts. The decision is seen as being consistent

with the previously stated policy that net income of a partnership should be distributed according to the basic agreement between the partners for the sharing of profits and losses (IT 2218 - paragraph 6).

6. Situations may arise, however, where it is apparent that the partnership agreement is merely a device to enable distributions to be made which are completely out of proportion to either the partners' true interests in the partnership assets or their participation in the partnership business. Such cases will continue to require assessment on their own merits.

COMMISSIONER OF TAXATION

17 June 1986

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