IT 2370 - Disability insurance - deductibility of premiums

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TAXATION RULING NO. IT 2370

DISABILITY INSURANCE - DEDUCTIBILITY OF PREMIUMS

F.O.I. EMBARGO: May be released

REF H.O. REF: 86/2525-5 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1209219	DISABILITY INSURANCE INSURANCE PREMIUMS	25(1) 26(j) 51(1)

OTHER RULINGS ON TOPIC : IT 208

PREAMBLE In a recent decision handed down by Taxation Board of Review No.1 the Board held that the taxpayer, a specialist physician, was entitled to a deduction pursuant to sub-section 51(1) of the Income Tax Assessment Act in relation to premiums paid by her on illness and disability insurance policies. The Board also held that the taxpayer was entitled to a deduction for a proportion of her expenses incurred in travelling to Australia to attend to investments. It has been decided that no appeal will be lodged against the decision which has been reported as Case T8 86 ATC 159, (1986) 29 CTBR(NS) Case 11.

FACTS 2. The taxpayer was a specialist physician in psychiatry. She had been working in the United Kingdom for a number of years. As she was taxed by the United Kingdom on the income which she earned there, that income was exempt from Australian tax.

3. The taxpayer maintained rental properties and other investments in Australia. In the year of income in question the taxpayer travelled to Australia. One of the reasons for her trip was to review the management of her investment portfolio.

4. In addition to allowing the taxpayer a deduction for the proportion (10%) of her travelling expenses which was relevant to reviewing her investments, the Board allowed deductions for premiums on illness and disability insurance policies taken out in Australia with Australian insurance firms.

5. The policies insured the taxpayer against loss of income through illness or disability. Although it was found that the taxpayer had ceased to carry on business in Australia, the Board held that any payments to the taxpayer under the policies would have an Australian source and would therefore be assessable in Australia even though they may have replaced income earned in the United Kingdom. The Board held that as the income payable under the insurance policies would have been assessable, the premiums were deductible pursuant to sub-section

51(1). The Board referred to the decision of the High Court in F.C. of T. v. D.P. Smith (1980-81) 147 CLR 578 the application of which is detailed in Taxation Ruling IT 208.

RULING

6. Once it was established that the benefits payable under the policies would be assessable in Australia, the decision to allow the premiums as deductions under sub-section 51(1) is seen to accord with the direction contained in paragraph 8 of Taxation Ruling IT 208. Deductions should be allowed for premiums in respect of personal disability policies providing for payment of periodic benefits of an income nature where those benefits would be assessable in Australia.

7. In looking to whether the benefits would be secured in Australia it would be useful to have regard to such factors as the place where the policy was issued, whether the insurer is an Australian company and the place from which payment of benefits would be made in the event of a claim.

COMMISSIONER OF TAXATION
10 OCTOBER 1986