TD 93/242 - Income tax: what is the income tax treatment of a deferred salary payment agreement?

Taxation Determination

Income tax: what is the income tax treatment of a deferred salary payment agreement?

This Ruling has been reviewed as part of a project to review public rulings. The ATO view expressed in this Ruling is current as of 8 January 2018.

1. A deferred salary payment agreement refers to an employment contract where the employee agrees to forgo a portion of the normal annual salary for his or her position in return for paid leave in a later period.

2. Subsection 6-5(2) of the *Income Tax Assessment Act 1997* (ITAA 1997) provides that the assessable income of a resident taxpayer includes the ordinary income derived by the taxpayer directly or indirectly from all sources, whether in or out of Australia, during the income year.

3. Income from employment, such as salary, wages or other payments to employees for services rendered, is generally derived only when received. That is, on a cash receipts basis.

4. Subsection 6-5(4) of the ITAA 1997 provides that, in working out whether, and when, an amount of ordinary income is derived, the amount is taken to have been received as soon as it is applied or dealt with in any way on the taxpayer's behalf or as the taxpayer directs. For instance, if an amount is credited to an employee in the books of his employer and can be drawn by the employee at any time, it is derived at the time it was so credited and made available to the employee.

5. Subsection 6-5(4) of the ITAA 1997 does not apply to include the deferred salary component, payable under a deferred salary payment agreement, in the taxpayer's assessable income before payment provided the deferred amount is not applied, accumulated or invested for the benefit of the taxpayer. In these circumstances the amount is assessable when received.

Example 1:

An employee enters into a five year employment contract with his/her employer. Under the contract, the employee is paid a contracted salary equivalent to 80% of the normal annual salary for the position in each of the first four years. In the fifth year the employee is entitled to paid sabbatical leave at the contracted salary amount.

The entitlement to paid sabbatical leave accrues over the period of the contract. Under the terms of the contract, the employee does not have access to the accruing paid sabbatical leave until the fifth year or on earlier termination of the contract. The salary forgone is not invested or accumulated on the employee's behalf.

The payment for the accrued sabbatical leave is assessable to the employee in the year of payment, that is, in the fifth year or on early termination.

Example 2:

At the direction of the employee, an employer pays the employee 80% of his/her yearly salary for four years. The remaining 20% per annum is placed into a savings account on the employee's behalf. In the fifth year the employee is in a position to take fully paid leave for a year by utilising the accumulated savings.

Subsection 6-5(4) of the ITAA 1997 *would apply to such an arrangement. The employee is entitled to receive the remaining 20% salary in each given year but directs the employer to place it into a savings account on his/her behalf. Therefore, the deferred salary is assessable to the employee in each of the given years.*

Commissioner of Taxation
16/12/94

FOI INDEX DETAIL: Reference No. I 1216836 Previously issued as Draft TD 93/D254
Related Determinations:
Related Rulings:
Subject Ref: assessable income; contract of employment; deferred income; income derived
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