

TD 93/58 - Income tax: under what circumstances is the receipt of a lump sum compensation/settlement payment assessable?

 This cover sheet is provided for information only. It does not form part of *TD 93/58 - Income tax: under what circumstances is the receipt of a lump sum compensation/settlement payment assessable?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: under what circumstances is the receipt of a lump sum compensation/settlement payment assessable?

1. It is assessable income under subsection 25(1) of the *Income Tax Assessment Act 1936* (ITAA):
 - (a) if the payment is compensation for loss of income only e.g. past year profits, and/or interest (even when the basis of the calculation of the lump sum cannot be determined); or
 - (b) to the extent that a portion of the lump sum payment is identifiable and quantifiable as income. This will be possible where the parties either expressly or impliedly agree that a certain portion of the payment relates to a loss of an income nature [cf. *Mc Laurin v. FC of T* (1961) 104 CLR 381; (1961) 8 AITR 180 and *Allsop v. FC of T* (1965) 113 CLR 341; (1965) 9 AITR 724].

2. The decision in *FC of T v. Spedley Securities Limited* 88 ATC 4126; (1988) 19 ATR 938 does not apply in these circumstances. The Full Federal Court in its reasons concluded:

'In the present case the amount received comprised or included recompense for damage to goodwill, which, it is agreed, is an item of capital. The point of the present case is that what was received was a lump sum, the ingredients of which were not identified (there may in fact have been no dissection made on either side) but which, it was held, included compensation for injury to a capital asset.' (at ATC 4131; ATR 942)

3. In the circumstances of paragraph 1 (a) there is a receipt of income only, that is, there is no capital component in the payment. It is therefore not relevant that the basis of the calculation of the lump sum cannot be determined.

4. In the circumstances of paragraph 1 (b) there is included in the lump sum a receipt of a capital nature, but the 'ingredients' of the payment can be identified, and therefore the portion of the payment which relates to income is assessable.

NOTE: Paragraph 26(j) and the provisions of Part IIIA of the ITAA are not taken into account in this determination.

(a) A and B have an agreement that requires B to pay to A a 5% share of the profits from B's business which A manages. A calculates that B has been paying only 4% of the profits of the business due an error in the figures. To settle the problem, B agrees to pay A \$50 000. The \$50 000 is assessable income to A as it is compensation for losses of an income nature only.

(b) C is an owner of land and agrees to accept a payment of \$100 000 in compensation for the compulsory resumption of the land. In addition, interest of 10% on the principal sum is to be paid. The compensation paid to the owner under the settlement includes an amount of \$20 000 for interest. The \$20 000 is assessable income under subsection 25(1) to C as it can be identified and quantified by the parties.

Commissioner of Taxation

1/4/93

FOI INDEX DETAIL: Reference No. I 1214582

Previously issued as Draft TD 92/D219

Related Determinations:

Related Rulings:

Subject Ref: assessability; lump sums; settlement sums

Legislative Ref: ITAA 25(1)

Case Ref: *FC of T v. Spedley Securities Limited* 88 ATC 4126; (1988) 19 ATR 938, *McLaurin v. FC of T* (1961) 104 CLR 381; (1961) 8 AITR 180, *Allsop v. FC of T* (1965) 113 CLR 341; (1965) 9 AITR 724

ATO Ref: UMG 0023

ISSN 1038 - 8982