CR 2007/66 - Income tax: treatment of payments received under amended clause 8 of the Australian Rugby Collective Bargaining Agreement Mark III

Class Ruling

Income tax: treatment of payments received under amended clause 8 of the Australian Rugby Collective Bargaining Agreement Mark III

Contents Para

This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- subsection 27A(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the ITAA 1997;
- section 104-155 of the ITAA 1997; and
- section 118-20 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is rugby players (Players) employed by the Australian Rugby Union (ARU), the New South Wales Rugby Union Limited, the Queensland Rugby Union Limited, the Australian Capital Territory and Southern New South Wales Rugby Union Ltd, or the Western Australian Rugby Union Inc. (the Rugby Bodies) who receive an amount pursuant to amended clause 8 of the Australian Rugby Collective Bargaining Agreement Mark III (the Agreement) entered into on 23 December 2004.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 34 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

Date of effect

8. This Ruling applies from 23 December 2004 to 31 January 2011. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

9. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The scheme that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- Class Ruling application from Deloitte Touche Tohmatsu Ltd (Deloitte) dated 13 February 2006;
- Letter from Deloitte dated 2 May 2006 supplying further information;
- A copy of the Agreement, including accompanying schedules; and
- Email dated 6 November 2006 from PriceWaterhouseCoopers Australia supplying further amendments to the Agreement.

Background

14. The Rugby Union Players Association (RUPA) and the ARU commissioned a tertiary body to conduct a large survey of retired players and consider issues associated with the Players' transition to retirement.

15. The tertiary body recommended, amongst other things, that RUPA and the ARU investigate a lump sum retirement initiative to assist the Players in their transition to retirement.

16. RUPA and the ARU are now proposing to amend the Agreement to vary the existing remuneration arrangements as contained in the Agreement. The Agreement expires on 31 January 2009 unless terminated earlier in accordance with the terms of The Agreement.

17. The Agreement provides terms and conditions of employment for Players contracted by the Rugby Bodies to play rugby in a Super 14 (previously 12) Tournament match, Tri- Nations Tournament match, Inter-Provincial match, a tour match or a match involving the Wallabies.

18. The parties to the Agreement are RUPA and the Rugby Bodies. The Agreement replaces an agreement entered into by the parties on or about 30 March 2001 (2001 Agreement).

19. The Agreement is legally enforceable by RUPA where a Player authorises RUPA in writing to seek its enforcement on his behalf and such written authorisation is forwarded to the Rugby Body which employs the Player.

20. Standard employment contracts are used by the Rugby Bodies and the Players. A Player has a present entitlement to be paid an agreed amount of remuneration under their employment contracts at fixed intervals when they have performed training, playing and other services specified in their contract.

21. Clause 2.3 of the Agreement provides that the obligations in clause 8 of the 2001 Agreement survive. Amended Clause 2.4 will provide that in the event that there are any amounts due pursuant to clause 8.7 of the 2001 Agreement, the parties agree that they shall not be required to be distributed to the Players pursuant to clause 8.7. Instead, these monies are to be dealt with in accordance with clause 8.10 of the Agreement in respect of the relevant year that the money was payable.

22. For the 2004 year, clause 8.4 of the 2001 Agreement required the Rugby Bodies to pay no less than $19,641,557 or thirty percent (30%) of the total combined Player Generated Revenue of the Rugby Bodies for the immediately preceding financial year (whichever is the greater) to, or in respect of, no more than one hundred and twenty (120) Players.

23. Under clause 8.7 of the 2001 Agreement year where the Rugby Bodies have paid less than the amounts they were required to pay under clause 8.4, the Rugby Bodies shall, within twenty one (21) days of either the Parties agreeing on the amount of any underpayment or the resolution of any arbitration pursuant to Clause 22 with regard to any underpayment, distribute the balance of the moneys required to be paid for that particular year, on a pro rata basis based on the guaranteed income component of an individual Player's remuneration, to all of the Players who received payment of part of the total amount required to be paid by the Rugby Bodies in that relevant year.

24. The amount of underpayment referred to in clause 8.7 has not yet been agreed to by the parties. When the amount has been agreed to it will be dealt with in accordance with amended clause 8.10 of the Agreement as provided for in amended clause 2.4 of the Agreement.

25. Under the Agreement the Rugby Bodies are required to pay the Players no less than the amounts specified in clauses 8.1 to 8.5. Clauses 8.1 to 8.5 state the following:

> 8.1 In 2005 the Rugby Bodies shall pay no less than $22,180,000 or twenty-five percent (25%) of the Gross Player Revenue for the immediately preceding financial year (whichever is the greater) to, or in respect of, no more than one hundred and twenty (120) Players.
>
> 8.2 Subject to clause 8.5, in 2006 the Rugby Bodies shall pay no less than $25,000,000 or twenty-six percent (26%) of the Gross Player Revenue for the immediately preceding financial year (whichever is the greater) to, or in respect of, no more than one hundred and thirty-two (132) Players.
>
> 8.3 Subject to clause 8.5, in 2007 the Rugby Bodies shall pay no less than $25,750,000 or twenty-six percent (26%) of the total combined Gross Player Revenue for the immediately preceding financial year (whichever is the greater) to, or in respect of, no more than one hundred and thirty-two Players.
>
> 8.4 Subject to clause 8.5, in 2008 the Rugby Bodies shall pay no less than $26,500,000 or twenty-six percent (26%) of the Gross Player Revenue for the immediately preceding financial year (whichever is the greater) to, or in respect of, no more than one hundred and thirty-two (132) Players.
>
> 8.5 The Rugby Bodies are not required to pay the amounts referred to in clause 8.2, 8.3 and 8.4 if there are only 3 Australian teams competing in the Super 14 Tournament. In such a situation, the Rugby Bodies will be required to pay the annual amount specified in clause 8.1 increased each year by CPI or such other amount as the parties agree in writing.

26. Where the amounts specified in clauses 8.1 to 8.5 of the Agreement and clause 8.7 of the 2001 Agreement are not paid by the Rugby Bodies in any given financial year, the Rugby Bodies are required to distribute a portion of the underpayment to a Player in accordance with clause 8.10 of the Agreement. Amended clause 8.10 will state:

> 8.10 Subject to this clause, in the event the Rugby Bodies have paid less than the amounts they are required to pay pursuant to clauses 8.1 to 8.5 of this agreement in any given financial year or clause 8.7 of the Agreement entered into by the Parties on or about 30 March 2001, then the Rugby Bodies shall, within twenty-one (21) days of the Parties agreeing on the amount of any underpayment, agree to distribute part of the balance of the moneys required to be paid for that particular year to a Player when that Player is no longer employed by any of the Rugby Bodies.
>
> A Player will be entitled to part of the balance of the moneys payable under this clause based on the following formula:
>
> [Total underpayment for a relevant year / (Number of eligible games for a relevant year $\times$ 22)] $\times$ (Number of eligible games the eligible player played in for a relevant year) $\times$ $(1+R)^N$
>
> Where:
>
> R is an agreed growth rate
>
> ^{N} is the number of years from 30 June of the following year in which the underpayment relates until the cessation of employment from all Rugby Bodies
>
> Eligible games are Test Matches, Inter-Provincial Matches and Tour Matches in the relevant year

27. Prior to distribution under amended clause 8.10 of the Agreement the underpayment for each year will remain the funds of the Rugby Bodies. The method of funding those payments and the risk of investing the monies will be fully borne by the Rugby Bodies. Amounts may be invested by the Rugby Bodies as a likely source of funding for future retirement payments to the Players.

28. A Player's entitlement to payment under amended clause 8.10 of the Agreement occurs when the Player ceases employment with any of the Rugby Bodies. There is no understanding, direction or arrangement whereby one of the Rugby Bodies undertakes to invest the money on behalf of the Player.

29. A Player will not be entitled to a payment under amended clause 8.10 of the Agreement where an employment contract terminates merely as a consequence of the Player ceasing employment with one of the Rugby Bodies to commence employment with another Rugby Body.

30. Payments under amended clause 8.10 of the Agreement will be made by the respective Rugby Body which last employs the Player.

31. Payments may be made on a monthly or quarterly basis after a Player is no longer employed with any of the Rugby Bodies. Under clause 8.11 of the Agreement the Rugby Bodies will endeavour to make any payment to a Player on or before 31 December in the year following the termination of the Player's employment with a Rugby Body. The payments will most likely continue to be paid no more than two years after the termination of the respective Player's contract.

32. Clause 8.15 of the Agreement provides that:

> In the event that any conduct of a Player or Players leads to a loss (whether by termination of a contractual arrangement or otherwise) by a Rugby Body of any sponsorship, supply or licence arrangement by a Rugby Body or any Special Rights Sponsor or any revenue that would have been received from such Special Rights Sponsor, then an amount equivalent to thirty percent (30%) of the amount reflecting the loss suffered by the Rugby Body cash value of the relevant sponsorship, supply or licence arrangement to the Rugby Body will be deducted from the minimum payment otherwise to be made under clauses 8.1 to 8.5.

33. Clause 8.16 of the Agreement provides that:

> In the event the total of the expense items deducted from the revenue items as contemplated in the definition of Player Generated Revenue in the Collective Bargaining Agreement entered into between the Parties on or about 30 March 2001 increase in any twelve (12) month period when compared with the previous twelve (12) month period by thirty-seven and one-half (37.5) percent or more then the obligation of the Rugby Bodies to pay any amount pursuant to clause 8.10 for that particular year will not apply.

34. Clause 8.17 of the Agreement provides that:

> In the event that any one or more of the six (6) scheduled domestic Test Matches due to be played in Australia in 2007 does not proceed due to the scheduling of RWC 2007, then the obligation of the Rugby Bodies to pay any amount pursuant to clause 8.10 in respect of 2007 will not apply.

Ruling

Ordinary income

35. An amount received by a Player pursuant to amended clause 8.10 of the Agreement is ordinary income under subsection 6-5(1).

36. A Player will derive assessable income for the purposes of subsection 6-5(2) when the Player receives an amount of payment pursuant to amended clause 8.10 of the Agreement.

Statutory income

Eligible termination payment

37. A payment received pursuant to amended clause 8.10 of the Agreement is not an eligible termination payment (ETP).

Capital gains tax

38. CGT event C2 will not happen, pursuant to section 104-25, at the time that clause 8.10 of the Agreement is varied.

39. CGT event H2 will not happen, pursuant to section 104-155, at the time that clause 8.10 of the Agreement is varied.

40. CGT event C2 will happen at the time that each Player's entitlement under amended clause 8.10 of the Agreement is distributed.

41. A capital gain made when CGT event C2 happens on the distribution of each Player's entitlement will be reduced, pursuant to section 118-20, by the extent to which the distribution is included in the Player's assessable income pursuant to section 6-5.

Commissioner of Taxation
11 July 2007

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

Ordinary income

42. Subsection 6-5(1) provides that the assessable income of a taxpayer includes income according to ordinary concepts, which is called ordinary income.

43. An amount received by a Player pursuant to amended clause 8.10 of the Agreement has the character of ordinary income as it is a reward for the performance of services (*MIM Holdings Ltd v. Commissioner of Taxation* 97 ATC 4420; (1997) 36 ATR 108, *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; (1956) 11 ATD 82; (1956) 4 AITR 248 and *Reuter v. FC of T* 93 ATC 5030; (1993) 24 ATR 527).

44. Subsection 6-5(2) provides that the assessable income of a resident taxpayer includes ordinary income derived directly or indirectly from all sources during the income year.

45. A taxpayer determines when income is derived by adopting a method of accounting for income. Taxation Ruling TR 98/1 sets out guidelines on the application of section 6-5, including the treatment of individuals who are in receipt of employment remuneration.

46. In determining the basis of derivation of income, paragraph 40 of TR 98/1 states that:

> In relation to non-trading income, the general rule is that there must be a receipt; '... there must be something "coming in"; that is, for income tax purposes, receivability without receipt is nothing' (from *Law of Income Tax*, Sir Houldsworth Shaw and Mr Baker, quoted by Dixon J in Carden's case,[1] and by Rich ACJ in *Permanent Trustee Co (NSW) v. FC of T*[2]).

47. Paragraph 42 of Taxation Ruling 98/1 states that:

> Income from employment would normally be assessable on a receipts basis. Salary, wages or other employment remuneration are assessable on receipt even though they relate to a past or future income period.

48. Under the receipts method, income is derived when it is received, either actually or constructively. The constructive receipt principle is reflected in subsection 6-5(4), which provides that derivation will occur as soon as the amount 'is applied or dealt with in any way' on behalf of the taxpayer.

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[1] *The Commissioner of Taxes (South Australia) v. The Executor Trustee and Agency Company of South Australia Limited* (1938) 63 CLR 108.
[2] (1940) 2 AITR 109; (1940) 6 ATD 5.

49. An amount is treated as received as soon as the taxpayer gets benefit from it or of something which is substantially equivalent to it.

50. The application of the constructive receipt principle was considered by the High Court in *Permanent Trustee Co (Executors of estate of Frederick Henry Prior, deceased) v. FC of T* (1940) 6 ATD 5. The court discussed the predecessor to subsection 6-5(4), section 19 of the ITAA 1936, and concluded that where questions involving the derivation of income are concerned, one must look to the realities as to whether a taxpayer's resources have actually increased by the accrual of the income and its transformation into some form of capital wealth or its utilisation for some purpose.

51. The Agreement places an obligation on the Rugby Bodies to pay certain amounts as specified in clauses 8.1 to 8.5 of the Agreement and clause 8.7 of the 2001 Agreement. Amended clause 8.10 of the Agreement recognises that the Rugby Bodies are required to pay the amount of the underpayment and provides for this contractual obligation to be met by the payment of the amount determined and in the manner set out. The formula used in amended clause 8.10 serves as a method of calculation or quantification and is not determinative of the character of the payment or whether a Player has derived an amount prior to ceasing employment with the Rugby Bodies.

52. The circumstances are such that prior to the Player ceasing employment with the Rugby Bodies no amount has come in to the Player. No amount has been dealt with on the Player's behalf or as the Player directs.

53. A Player will derive assessable income for the purposes of section 6-5 when the Player receives an amount in the form of a lump sum or by periodical payment under amended clause 8.10 of the Agreement.

Statutory income

54. Section 6-10 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included in assessable income by another provision. The assessable income of an Australian resident includes statutory income from all sources, whether in or out of Australia (subsection 6-10(4)).

55. Section 10-5 lists those provisions about assessable income and it includes provisions about ETPs. If an amount is included in assessable income under both the ordinary and statutory income rules, the terms of the provision that includes it as statutory income prevail unless it is stated otherwise (section 6-25).

Eligible termination payment

56. An ETP is exhaustively defined in subsection 27A(1) of the ITAA 1936. There are a number of different payments that qualify as an ETP.

57. Paragraph (a) of the definition of an ETP in subsection 27A(1) of the ITAA 1936 states in part:

> **eligible termination payment**, in relation to a taxpayer, means:
>
> (a) any payment made in respect of the taxpayer in consequence of the termination of any employment of the taxpayer other than a payment…

58. The phrase 'in consequence of' is not defined in the ITAA 1936. However, the words have been interpreted by the courts in several cases. The Commissioner has also issued Taxation Ruling TR 2003/13 which discusses the meaning of the phrase.

59. The Full High Court considered the expression 'in consequence of' in *Reseck v. Federal Commissioner of Taxation* (1975) 133 CLR 45; (1975) 6 ALR 642; (1975) 49 ALJR 370; (1975) 5 ATR 538; (1975) 75 ATC 4213 (*Reseck*). Justice Gibbs stated:

> Within the ordinary meaning of the words a sum is paid in consequence of the termination of employment when the payment follows as an effect or result of the termination… It is not my opinion necessary that the termination of the services should be the dominant cause of the payment.

While Justice Jacobs stated:

> It was submitted that the words 'in consequence of' import a concept that the termination of the employment was the dominant cause of the payment. This cannot be so. A consequence in this context is not the same as a result. It does not import causation but rather a 'following on'.

60. In looking at the phrase 'in consequence of' the Full Federal Court in *McIntosh v. Federal Commissioner of Taxation* (1979) 25 ALR 557; (1979) 10 ATR 13; (1979) 45 FLR 279; (1979) 79 ATC 4325 (*McIntosh*) considered the decision in *Reseck*. Justice Brennan stated:

> Though Jacobs J. speaks in different terms, his meaning may not be significantly different from the meaning of Gibbs J... His Honour denies the necessity to show that retirement is the dominant cause, but he does not allow a temporal sequence alone to suffice as the nexus. Though the language of causation often contains the seeds of confusion, I apprehend his Honour to hold the required nexus to be (at least) that the payment would not have been made but for the retirement.

61. In the same case, Justice Lockhart stated:

> In my opinion, although the phrase is sufficiently wide to include a payment caused by the retirement of the taxpayer, it is not confined to such a payment. The phrase requires that there be a connection between the payment and the retirement of the taxpayer, the act of retirement being either a cause or an antecedent of the payment. The phrase used in section 26(d) is not 'caused by' but 'in consequence of'. It has a wider connotation than causation and assumes a connection between the circumstance of retirement and the act of payment such that the payment can be said to be a 'following on' of the retirement.

62. The Courts have held that settlement amounts arising from actions that are in some way connected with the termination of employment are ETPs.

63. The Federal Court in *Le Grand v. Commissioner of Taxation* (2002) 195 ALR 194; (2002) 2002 ATC 4907; (2002) 51 ATR 139; [2002] FCA 1258; (2002) 24 FCR 53 (*Le Grand*) held that an amount received for settlement of the claim for misleading and deceptive conduct did not break the casual relationship that existed between the termination of the applicant's employment and the payment of the offer of compromise. The decisions in *Reseck* and *McIntosh* were applied with Justice Goldberg stating:

> I do not consider that the issue can simply be determined by seeking to identify the 'occasion' for the payment. The thrust of the judgments in *Reseck* and *McIntosh* is rather to the effect that a payment is made 'in consequence' of a particular circumstance when the payment follows on from, and is an effect or result, in a causal sense, of that circumstance. The passages in the judgments to which I referred earlier make this clear. They also make it clear that there need not be identified only one circumstance which gives rise to a payment before it can be said that the payment is made 'in consequence' of that circumstance. The passages to which I have referred make it clear that it can be said that a payment may be made in consequence of a number of circumstances and that, for present purposes, it is not necessary that the termination of the employment be the dominant cause of the payment so long as the payment follows, in the causal sense referred to in those judgments, as an effect or result of the termination.

64. The Full Federal Court in *Dibb v. Commissioner of Taxation* (2004) 207 ALR 151; (2004) 2004 ATC 4555; (2004) 55 ATR 786; (2004) 136 FCR 388; [2004] ALMD 5780; [2004] FCAFC 126 (*Dibb*) has applied the above decisions in finding that the payment received by the taxpayer under a Deed of Release to settle various causes of action against the employer following the termination of employment was an ETP.

65. The Commissioner in TR 2003/13 considered the phrase 'in consequence of' as interpreted by the Courts. Paragraph 5 of TR 2003/13 states:

> …the Commissioner considers that a payment is made in respect of a taxpayer in consequence of the termination of the employment of the taxpayer if the payment 'follows as an effect or result of' the termination. In other words, but for the termination of employment, the payment would not have been made to the taxpayer.

66. While paragraph 31 of TR 2003/13 goes on to say:

> It is clear from the decision in Le Grand, that when a payment is made to settle a claim brought by a taxpayer for wrongful dismissal or claims of a similar nature that arise as a result of an employer terminating the employment of the taxpayer, the payment will have a sufficient causal connection with the termination of the taxpayer's employment. The payment will be taken to have been made in consequence of the termination of employment because it would not have been made but for the termination.

67. Under the Agreement, the Rugby Bodies are required to pay the Players no less than the amounts specified in clauses 8.1 to 8.5 of the Agreement and clause 8.7 of the 2001 Agreement.

68. It is clear from the above clauses that the Players have an entitlement to the amounts referred to in the mentioned clauses. It is also clear that the Rugby Bodies have a contractual obligation to make payments to the Players of the amounts as specified in clauses 8.1 to 8.5 of the Agreement and clause 8.7 of the 2001 Agreement.

69. Further, amended clause 8.10 of the Agreement reinforces the fact that the Rugby Bodies have an obligation to make the payments in question in the years referred to in the relevant clauses.

70. The result of amended clause 8.10 is that payments of amounts otherwise due to the Players are deferred until such time as the Players are no longer employed by any of the Rugby Bodies.

71. Making these payments to Players after they have terminated employment does not alter the fact that the payments have been made to the Players in relation to the performance of their duties. A consequence of an underpayment is that payment of this amount is deferred until such time as a Player's employment is terminated. Therefore the payments will not be made 'in consequence of' the termination of the Players' employment, but are amounts owing to the Players which, under the agreement, are made to them on termination of their employment.

72. The entitlement to the payments does not arise at the termination of the Players' employment, but rather, the entitlement to the payments is already in existence prior to the termination of employment. Therefore, the connection between the making of the payments and the termination of employment is merely temporal, not causal.

73. This reinforces the conclusion that the payments are not in consequence of the termination of the Players' employment.

Capital gains tax

74. Currently under clause 8.10 of the Agreement a Player acquires a right to enforce a payment by one of the Rugby Bodies upon RUPA and the Rugby Bodies agreeing to the amount of any underpayment in a particular year. This right is a CGT asset (subsection 108-5(1)).

75. Given the particular circumstances, the only possible CGT events which need to be considered are CGT events C2 (section 104-25) and H2 (section 104-155).

CGT event C2

76. Subsection 104-25(1) provides that CGT event C2 happens if the ownership of an intangible CGT asset ends because it expires or is redeemed, cancelled, released, discharged, satisfied, abandoned, surrendered or forfeited. The time of the event is when a taxpayer enters into the contract that results in the asset ending (paragraph 104-25(2)(a)). If there is no contract, the event happens when the asset ends (paragraph 104-25(2)(b)).

77. The amendment to clause 8.10 of the Agreement only changes the timing of and the method of calculating the payment. A Player's right to enforce payment of a proportion of the underpayment by one of the Rugby Bodies has not ended. Accordingly CGT event C2 has not happened at the time that clause 8.10 of the Agreement is varied.

78. CGT event C2 will happen at the time that each Player's entitlement is distributed because the Player's right under amended clause 8.10 of the Agreement will have been satisfied at that time.

79. The anti-overlap provisions in section 118-20 may have application. A capital gain made when CGT event C2 happens on the distribution of each Player's entitlement will be reduced, pursuant to section 118-20, by the extent to which the distribution is included in the Player's assessable income pursuant to a provision outside Part 3-1, such as section 6-5.

CGT event H2

80. Subsection 104-155(1) provides that, subject to the exceptions specified in subsection 104-155(5), CGT event H2 happens if an act, transaction or event occurs in relation to a CGT asset, and that act, transaction or event does not result in an adjustment to that asset's cost base or reduced cost base.

81. In these circumstances, the change in the timing of and the method of calculating the payment is not considered to be an act, transaction or event in relation to the CGT asset for the purposes of subsection 104-155(1). Consequently, CGT event H2 does not happen at the time clause 8.10 is varied.

Appendix 2 – Detailed contents list

82. The following is a detailed contents list for this Ruling:

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 98/1; TR 2003/13

Subject references:

- capital gains tax
- derivation
- eligible termination payments
- ordinary income

Legislative references:

- ITAA 1936 19
- ITAA 1936 26(d)
- ITAA 1936 27A(1)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-5(2)
- ITAA 1997 6-5(4)
- ITAA 1997 6-10
- ITAA 1997 6-10(4)
- ITAA 1997 6-25
- ITAA 1997 10-5
- ITAA 1997 Pt 3-1
- ITAA 1997 104-25
- ITAA 1997 104-25(1)
- ITAA 1997 104-25(2)(a)
- ITAA 1997 104-25(2)(b)
- ITAA 1997 104-155
- ITAA 1997 104-155(1)
- ITAA 1997 104-155(5)
- ITAA 1997 108-5(1)
- ITAA 1997 118-20
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Case references:

- The Commissioner of Taxes (South Australia) v. The Executor Trustee and Agency Company of South Australia Limited (1938) 63 CLR 108
- Dibb v. Commissioner of Taxation (2004) 207 ALR 151; (2004) 2004 ATC 4555; (2004) 55 ATR 786; (2004) 136 FCR 388; [2004] ALMD 5780; [2004] FCAFC 126
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47; (1956) 11 ATD 82; (1956) 4 AITR 248
- Le Grand v. Commissioner of Taxation (2002) 195 ALR 194; (2002) 2002 ATC 4907; (2002) 51 ATR 139; [2002] FCA 1258; (2002) 24 FCR 53
- MIM Holdings Ltd v. Commissioner of Taxation 97 ATC 4420; (1997) 36 ATR 108
- McIntosh v. Federal Commissioner of Taxation (1979) 25 ALR 557; (1979) 10 ATR 13; (1979) 45 FLR 279; (1979) 79 ATC 4325
- Permanent Trustee Co (Executors of estate of Frederick Henry Prior, deceased) v. FC of T (1940) 6 ATD 5
- Permanent Trustee Co (NSW) v. FC of T (1940) 2 AITR 109; (1940) 6 ATD 5
- Reseck v. Federal Commissioner of Taxation (1975) 133 CLR 45; (1975) 6 ALR 642; (1975) 49 ALJR 370; (1975) 5 ATR 538; (1975) 75 ATC 4213
- Reuter v. FC of T 93 ATC 5030; (1993) 24 ATR 527

ATO references

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