TR 2001/D11 - Income tax: assessability of payments received from strike funds

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Draft Taxation Ruling
Income tax: assessability of payments received from strike funds

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Preamble

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office. DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings that represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

What this Ruling is about

1. This Ruling sets out the principles that apply in determining whether a payment received by a member from a trade union or other employee group resulting from participation in industrial action is assessable income.

2. The Ruling examines:

   (i) whether the payment is assessable under section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997');

   (ii) whether a non cash benefit can be assessable income; and

   (iii) the application of paragraph 26(e) of the *Income Tax Assessment Act 1936* ('ITAA 1936').

3. This ruling does not cover the assessability of return to work payments under section 15-3 of the ITAA 1997.

4. Draft Taxation ruling TR 2000/D10 considers whether contributions to strike funds are deductible.

Date of effect

5. This Ruling applies to years commencing both before and after its date of issue. However, 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 (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Ruling

Application of section 6-5: income according to ordinary concepts

6. We understand the usual practice is for a strike fund to make a one-off voluntary payment to a member in financial hardship during the period of industrial action. There is no right or entitlement to the payment, which is made because the member satisfies a financial hardship criteria. Further, there is no expectation of receiving regular, fixed payments from the strike fund. A one-off voluntary payment in these circumstances is not income according to ordinary concepts and is therefore not included in assessable income.[1]

7. Although it is not the common practice, if a member has an expectation of receiving regular, fixed payments from the strike fund, and is accordingly able to rely on the payments for his or her regular expenditure, the payments will be assessable income.

Application of section 21: non-cash benefits

8. The provision of a non-cash benefit to a striking member in financial hardship, in the circumstances outlined in paragraph 6, will not form part of the member's assessable income.

Application of paragraph 26(e)

9. Payments are made to striking members because of their membership of a trade union or other employee group. As the payments are not made in respect of, or in relation directly or indirectly to any employment of or services rendered by the member, paragraph 26(e) of the ITAA 1936 will not apply to the payment.

Explanations

Nature and form of strike payments

10. Payments to striking members to which this Ruling applies are usually made from either general funds or a specific strike fund established by the member's union or employee group, although payments can also come from other unions or employee groups.

11. Where a strike fund is established in relation to specific industrial action a special levy is usually placed on members not involved in that dispute. However, once established the fund may continue to operate past the dispute to support employees involved in

[1] A contribution to a strike fund in such circumstances will not be deductible to the contributor. Refer to TR 2001/D10.

future industrial action. It is more common, however, for funds to cease when the current dispute is resolved.

Application of section 6-5: income according to ordinary concepts

12. Whether or not a particular receipt is income according to ordinary concepts depends upon its character in the hands of the recipient.[2] Regard must be had to the whole of the circumstances in which the payment is received.[3]

13. The usual practice is for a strike fund to provide a one-off voluntary payment to members who are in financial hardship during the period of industrial action. The decision to establish a strike fund and offer this assistance to members will usually not be made by the union or employee group until it is quite clear that the industrial action is likely to continue for some period of time.

14. There is no right or entitlement to receive the payment, nor is there an expectation of receiving regular, fixed payments from the strike fund. We have been advised by the ACTU that whether or not a payment is made depends on factors such as:

(i) whether the member has found alternative employment during the dispute;

(ii) whether his or her spouse is employed; and

(iii) the number of any dependent children.

15. Accordingly, a payment will only be made if the member satisfies a financial hardship criteria. Also, we have been advised that the amount of the payment to a striking member is usually small, not being related in any way to the member's wage.

16. Where a one-off voluntary payment is made from a strike fund to a member in financial hardship during industrial action in the manner outlined in paragraphs 14 and 15, it is not income according to ordinary concepts. Consequently, the payment does not form part of assessable income.

17. Although we understand it is not the common practice, if regular, fixed payments are made to striking members during industrial action under an agreement or arrangement to make such

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[2] Refer to *Scott v. FC of T* (1966) 117 CLR 514, at 526; (1966) 14 ATD 286, at 293.

[3] Refer to *The Squatting Investment Co Ltd v. FC of T* (1953) 86 CLR 570, at 627; (1953) 10 ATD 126, at 146; *FC of T v. Dixon* (1952) 86 CLR 540 at 555; (1952) 10 ATD 82, at 85. A generally decisive consideration is whether the payment is the product in a real sense of any employment, services or business carried on by the recipient. However, the payments covered by this Ruling are not considered to be a product of any employment, services or business carried on by the member.

payments, the payments will be assessable income in the hands of the striking member.[4] The fact that a payment is voluntary, in the sense that the union is not under a legal obligation to make it, does not prevent it being income in such circumstances.

Application of section 21: non-cash benefits

18. A non-cash benefit provided to a striking member will not be assessable unless it is convertible into money.[5] A non-cash benefit provided to a striking member will only form part of the member's assessable income if the circumstances surrounding the provision of the benefit are such that the amount would be assessable income if paid as money.

Application of paragraph 26(e)

19. Broadly speaking, paragraph 26(e) of the ITAA 1936 provides that a taxpayer's assessable income includes the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums which are allowed, given, or granted to the taxpayer in respect of, for, or in relation (directly or indirectly) to any employment or services rendered by the taxpayer.

20. Whilst a striking member would not have received a payment but for the fact that he or she was an employee, this does not make the payment in respect of, or for or in relation directly or indirectly to, the employment.[6] There must be some causal relationship between the payment to the taxpayer and the employment or services rendered. We consider a payment is made to a member as a consequence of his or her membership of a trade union or employee group and therefore paragraph 26(e) of the ITAA 1936 does not apply.

Cross references of provisions

21. A reference in this ruling to section 6-5 or section 15-3 of the ITAA 1997, expresses the same ideas as subsection 25(1) and paragraph 26(eb) of the ITAA 1936 respectively.

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[4] Refer to *FC of T v. Dixon* ((1952) 86 CLR 540; (1952) 10 ATD 82); *Keily v. Federal Commissioner of Taxation* 83 ATC 4248; 14 ATR 156; *Federal Commissioner of Taxation v. Blake* 84 ATC 4661; 15 ATR 1006; *Federal Commissioner of Taxation v. Hyteco Hiring Pty Limited* 92 ATC 4694; 24 ATR 218)

[5] Refer to *Tennant v. Smith* (1892) 3 TC 158; (1892) AC 150; *FC of T v. Cooke & Sherden* 80 ATC 4140; (1980) 10 ATR 696.

[6] Refer to *Dixon's* case and *Payne v. FC of T* 96 ATC 4407; (1996) 32 ATR 516.

Examples

22. Helen is a member of a trade union. The union embarks on industrial action resulting in Helen and her colleagues going out on strike. The union subsequently establishes a strike fund, to assist its members who are in financial hardship during the dispute.

23. Helen is a single parent, with three dependent children. The union gives Helen a one-off payment of $150 to help her meet her personal commitments. Other colleagues receive varying one-off payments based on their individual circumstances. Some colleagues receive no assistance because their partners' work.

24. Helen did not have any right or entitlement to receive the payment from the strike fund, nor was it received in circumstances where she can expect to receive regular, fixed payments from the fund. The payment does not form part of Helen's assessable income.

Detailed contents list

25. Below is a detailed contents list for this draft Ruling:

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Your comments

26. If you wish to comment on this draft Ruling, please send your comments promptly by **23 November 2001** to:

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Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TR 92/20; TR 2000/D10

Subject references:
- assessable payments
- strike funds

Legislative references:
- ITAA 1936 21
- ITAA 1936 25(1)
- ITAA 1936 26(e)
- ITAA 1936 26(eb)
- ITAA 1997 6-5
- ITAA 1997 15-3

Case references:
- Keily v. FC of T 83 ATC 4248; 14 ATR 156
- FC of T v. Blake 84 ATC 4661; 15 ATR 1006;
- FC of T v. Cooke & Sherden 80 ATC 4140; (1980) 10 ATR 696
- FC of T v. Dixon 86 CLR 540; (1952) 10 ATD 82
- FC of T v. Hyteco Hiring Pty Limited 92 ATC 4694: 24 ATR 218
- Payne v. FC of T 96 ATC 4407; (1996) 32 ATR 516
- Tennant v. Smith (1892) 3 TC 158; (1892) AC 150;
- Scott v. FC of T (1966) 117 CLR 514; (1966) 14 ATD 286,
- The Squatting Investment Co Ltd v. FC of T (1953) 86 CLR 570; (1953) 10 ATD 126

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