


IT 2035 - Conditional payment of tax

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TAXATION RULING NO. IT 2035

CONDITIONAL PAYMENT OF TAX

F.O.I. EMBARGO: May be released

REF H.O. REF: S104/1/54 P2 F15

F.O.I. INDEX DETAIL

REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

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PREAMBLE Advice has been sought on the treatment to be given to payments received where the taxpayer remitting the amount has, in a letter accompanying the payment, purported to attach certain conditions to the payment. The taxpayer's letter is phrased in such a way as to imply that the banking of the cheque attached denotes acceptance of the stipulated conditions.

2. Generally, payments of this kind have been forwarded by taxpayers who have disputes against their assessments and the amount tendered represents partial payment of the tax attributable to the matters at issue. The conditions usually applied are that additional tax for late payment (section 207), which has accrued to the date of the payment be remitted and that it ceases to accrue on the balance outstanding, if any, until the matters in dispute are ultimately resolved and that any additional tax for incorrect return (section 226(2)), that has been imposed be waived.

RULING 3. Two issues arise; namely,

- (i) does the banking of the cheque have the effect of binding the Commissioner of Taxation to the terms set out in the taxpayer's letter accompanying the payment? and
- (ii) if the terms are not binding, is the Commissioner of Taxation entitled to keep the amount tendered?

4. With regard to (i) above, it is the view of this office that the banking of the cheque does not have the effect of binding the Commissioner of Taxation to the terms of the taxpayer's offer.

5. With regard to (ii) above, this office is of the view that the moneys tendered by the taxpayer need not be returned to him/her. However, the taxpayer should be immediately notified that the terms under which the payment was said to be made are unacceptable and the decision has been made to retain the payment unconditionally as payment (or part payment) of the outstanding debt.

6. Both of these decisions are supported by independent

legal advice.

COMMISSIONER OF TAXATION
6 MAY 1983