IT 2131 - Income tax : transfer fees paid to a footballer - imposition of additional tax for incorrect return

TAXATION RULING NO. IT 2131

INCOME TAX : TRANSFER FEES PAID TO A FOOTBALLER - IMPOSITION OF ADDITIONAL TAX FOR INCORRECT RETURN

F.O.I. EMBARGO: May be released

REF H.O. REF: J 207/205
J 149/176
J 196/5

DATE OF EFFECT: Immediate

B.O. REF: AP/453 069 214 (Melbourne)

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1122201	- ASSESSABLE INCOME - TRANSFER FEES PAID TO A FOOTBALLER	25(1), 26(e)
	- ADDITIONAL TAX FOR INCORRECT RETURN - NON DISCLOSURE OF TRANSFER FEES PAID TO A FOOTBALLER	226(2), 226(3)

PREAMBLE The main question at issue in the reference reported at Case R107 84 ATC 717; Case 159 27 CTBR (NS) 1254 concerned the assessability of two amounts each totalling $5000 received by the taxpayer, a professional footballer, from a football club. A subsidiary question was whether additional tax imposed for failure to include these amounts as assessable income should be remitted to a greater extent than that remitted by the Commissioner.

FACTS 2. The taxpayer was a professional Australian Rules League footballer. While under contract with Club Y, the taxpayer, in November 1976, entered into a playing contract with Club X. The contract contained an undertaking by the taxpayer that he would play football solely for Club X and in return would receive specified remuneration. In fact, he received two amounts totalling $10,000 during the 1977 income year, pending his clearance application.

3. Club Y refused the clearance application and in June 1977 Club X advised the taxpayer that it would not be proceeding with the transfer but that he could retain the sum of $10,000.

4. The taxpayer's 1977 return of income contained no reference to the receipt of $10,000. Some five months after lodging the return the taxpayer, through his agent, made the Commissioner aware of the receipt but submitted that it did not constitute assessable income. The Commissioner included the amount in question in the taxpayer's assessable income and

additional tax for omission of income was imposed pursuant to sub-section 226(2) (this was subject to remission to the extent of four-fifths).

5. Taxation Board of Review No. 2 held that the receipt of $10,000 constituted assessable income of the taxpayer, but that the additional tax should be remitted to nil on the basis that the taxpayer had implemented corrective action prior to the raising of the assessment so that the offending omission was not in existence at the point of assessment.

6. There was no evidence adduced to support a finding that the decision to disclose the receipt of the $10,000 resulted from an awareness by the taxpayer that his financial affairs were subject to investigation by the Taxation Office.

RULING

7. There will be no appeal against the Board's decision to remit the additional tax to nil which depended upon the particular facts proved before the Board.

8. The guidelines in Taxation Ruling IT 2012 continue to apply.

COMMISSIONER OF TAXATION
2 January 1985

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