IT 2478 - Income tax : pensions (and lump sums) received under the Superannuation Act (C'th) 1976

TAXATION RULING NO. IT 2478

INCOME TAX : PENSIONS (AND LUMP SUMS) RECEIVED UNDER THE SUPERANNUATION ACT (C'th) 1976

F.O.I. EMBARGO: May be released

REF

N.O. REF: M 365/21/1
87/4515-3
87/4981-7

DATE OF EFFECT: Immediate

B.O. REF: VIC. ITR 1218
VIC. ITR 1243

DATE ORIG. MEMO ISSUED: 4 June 1976

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1183813	PENSIONS, ANNUITIES	26AA
	- UNDEDUCTED PURCHASE PRICE	27H
	- COMMUTATION OF PENSION	51(1)

PREAMBLE

Two recent decisions of the Administrative Appeals Tribunal have affirmed the Commissioner's treatment of superannuation pensions and lump sum payments received under the Superannuation Act (C'th) 1976, as outlined in National Office memoranda M 365/21/1 dated the 4 June 1976 and 14 September 1976.

FACTS

2. In Case U114 87 ATC 682; AAT Case 84 18 ATR 3608 a decision of 21 May 1987, the Tribunal (Deputy President R.K. Todd) held that a deduction under sub-section 51(1) of the Income Tax Assessment Act was not allowable for undeducted purchase price to a taxpayer who received in the year ended 30 June 1982 an invalidity pension under the Superannuation Act. The Tribunal also held that the amount involved should not be excluded from assessable income by section 26AA of the ITAA.

3. The taxpayer was a Federal public servant who retired due to invalidity. On retirement he was entitled to receive a pension calculated as a percentage of his final salary and a lump sum equal to his accumulated supplementary contributions. He had the option to elect, within one month of becoming entitled to the invalidity pension, to receive a smaller pension and a larger lump sum payment equal to his basic and supplementary contributions to the fund.

4. The taxpayer received the larger pension and smaller lump sum, choosing not to elect to receive the smaller pension and larger lump sum. The Commissioner allowed an exclusion under section 26AA for undeducted purchase price against the pension in accordance with the usual practice. The taxpayer argued that he had used the additional lump sum that he could have received to "purchase" the additional pension and claimed a deduction for undeducted purchase price under sub-section 51(1) for his amount.

5. In reaching its decision the Tribunal stated that the relevant provisions of the Superannuation Act were not

ambiguous. Thus it was not necessary to resort to any extrinsic materials to interpret the legislation; section 15AB of the Acts Interpretation Act 1901 (C'th) did not apply. The Tribunal found that the notional additional lump sum (i.e. the larger lump sum which he could have elected to receive) was not used to purchase the additional pension received by the taxpayer. The notional lump sum was therefore not deductible under sub-section 51(1) nor could it be excluded under section 26AA. Moreover the amount was an item of a capital nature not deductible under sub-section 51(1) in any circumstances.

6. This decision is consistent with decisions of the former Taxation Board of Review No.1 in Case P130 82 ATC 651; Case 58 26 CTBR (NS) and Case P131 82 ATC 658; Case 59 26 CTBR (NS).

7. In Case U106 87 ATC 642; AAT Case 77 18 ATR 3553 a decision dated the 5 May 1987, the Tribunal (Deputy President R.K. Todd) held that an exclusion from assessable income in the years ended 30 June 1983 and 1984 for undeducted purchase price was not possible where a superannuation pension was partially commuted into a lump sum payment.

8. The taxpayer was a Federal public servant. On retirement he was entitled to receive, under the Superannuation Act, a standard age retirement pension plus an additional age retirement pension in respect of his own contributions to the superannuation fund. He could elect to commute the additional age retirement pension into a lump sum payment.

9. The taxpayer commuted his additional pension into a lump sum and sought to exclude from his assessable income an amount under section 26AA as undeducted purchase price against the standard pension he received. The Tribunal found that the standard pension was not purchased by the taxpayer because when the taxpayer made his contributions to the fund there was no certainty of a future receipt of pension by the taxpayer. In finding that the taxpayer did not purchase his pension the Tribunal preferred to adopt and follow the views expressed by Mr P.M. Roach, then a member of Taxation Board of Review No.1, in Case S63, 85 ATC 454 at 459-60; Case 68 28 CTBR(NS) at 489-490 and the majority members of that Board of Review in Case M29, 80 ATC 191; Case 6 24 CTBR(NS), and Case M30, 80 ATC 220; Case 7 24 CTBR(NS) than to follow the decision of the Supreme Court of the Australian Capital Territory in F.C. of T v Knight 83 ATC 4096; (1983) 15 ATR 88.

10. As the pension was not purchased the taxpayer was not entitled to any exclusion under section 26AA.

RULING

Retirement

11. Under the Superannuation Act (C'th) 1976 a member of the superannuation fund is entitled to receive a standard age retirement pension based on a percentage of his salary plus an additional age retirement pension in respect of the member's own contributions. A member can elect to commute the additional

pension into a lump sum payment.

12. If no election is made to commute the additional pension the member is entitled to an exclusion under section 26AA for undeducted purchase price against the additional pension. The amount of the exclusion is the aggregate of the contributions made by the member to the fund which have not been allowed as deductions under section 82H or as a rebate under section 159R. Where an election to commute the additional pension into a lump sum is made no exclusion is allowed under section 26AA against the standard pension because this pension is not a purchased annuity. Lump sum payments made before 1 July 1983 in commutation of the additional pension were liable to tax on five per cent of their amount in terms of paragraph 26(d) of the Income Tax Assessment Act.

Invalidity

13. When a member retires due to invalidity, the member is entitled to receive a pension calculated as a percentage of his final salary and a lump sum equal to the member's accumulated supplementary contributions. The member could elect to receive a smaller pension and a larger lump sum equal to the basic and supplementary contributions of the member.

14. Where the member receives the larger pension an exclusion is allowed under section 26AA for undeducted purchase price against the pension. The undeducted purchase price is to be calculated in the usual manner and not by reference to any notional lump sum that might have been received by the member.

15. Where the member elects to receive a smaller pension and a larger lump sum no exclusion under section 26AA is allowable because the smaller pension is not considered to be a purchased annuity.

Post-July 1983

16. The taxation of pensions, annuities and lump sum payments received on or after the 1st July 1983 in consequence of the termination of employment is determined by the provisions of Part III, Division 2, sub-division AA of the Income Tax Assessment Act, sections 27A to 27J. Section 27H deals with the assessment of annuities and superannuation pensions. The more significant differences between former section 26AA and section 27H are that section 27H:

(a) includes in assessable income any supplement to an annuity or pension;

(b) takes into account any residual capital value of an annuity or pension in determining the part to be excluded from assessable income as representing undeducted purchase price; and

(c) takes into account the life expectancy of persons other than the annuitant or pensioner, to whom the annuity or pension can be expected in the future to become payable, in determining the amount to be excluded from assessable income.

COMMISSIONER OF TAXATION
16 June 1988