IT 2536 - Income tax : whether rebates of commissions are assessable

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TAXATION RULING NO. IT 2536

INCOME TAX : WHETHER REBATES OF COMMISSIONS ARE ASSESSABLE

F.O.I. EMBARGO: May be released

REF N.O. REF: 89/2970-0 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011276	REBATING OF COMMISSIONS	25
	ELIGIBLE TERMINATION PAYMENTS	SUBDIVISION AA OF DIVISION 2 OF PART III
	CAPITAL GAINS	PART IIIA

OTHER RULINGS ON TOPIC IT 5

PREAMBLE This Ruling considers the taxation implications where part or all of any service fee or commission in respect of non-tax-deductible upfront payments for entry into an investment product by investors is refunded by either managers of investment products or investment intermediaries such as brokers.

2. Although the individual fact situations may vary, these cases can be divided into two basic types:

(i) where a service fee or commission payable by an investor is deducted from the initial investment sum but subsequently refunded in whole or part; and

(ii) where the investor, wishing to keep the investment sum intact, pays the service fee or commission out of other moneys and part or all of the service fee is subsequently refunded.

RULING 3. The taxation treatment of such refunds depends on the source of the funds used to pay the service fee or commission in the first place and the nature of the refund in the hands of the investor. Consequently, it is necessary to draw a distinction between eligible termination payment moneys and moneys from other sources.

4. In essence, the refund represents a reduction in the service fee or commission paid for entry into the particular investment product. In accordance with Taxation Ruling No IT 5 the service fee or commission is regarded as part of the cost of the investment and accordingly of a capital nature. Where part or all of the service fee or commission is refunded the view is taken that, subject to one exception, the refunded moneys would be capital in the hands of the investor.

5. The exception relates to cases where an eligible termination payment (ETP) is being rolled over and part of the ETP is used to pay the service fee or commission. In these circumstances a partial or full refund of the service fee or commission has the result that a part of the ETP has not been effectively rolled over into either a superannuation fund, approved deposit fund or used to purchase an annuity. In such cases the refund is required to be treated as assessable to the investor as an ETP in accordance with the provisions of Subdivision AA of Division 2 of Part III of the Income Tax Assessment Act.

6. Where the refund relates to an ETP that was received by the taxpayer on or before the date of this Ruling, the discretion under subsection 27A(1) of the Income Tax Assessment Act will be exercised to allow the taxpayer 90 days from the date of this Ruling to roll over the refund.

7. A taxpayer who receives an ETP after the date of this Ruling will generally have the normal statutory time limit of 90 days from the date of receipt of the ETP to roll over any refund.

8. Where funds other than ETP moneys are used to pay the service fee or commission in the first place, the refund would not be assessable.

Capital Gains Tax

9. Where an investment product is subject to the capital gains tax provisions, subsection 160ZH(11) provides that in calculating the cost base, the indexed cost base or the reduced cost base, account shall not be taken of any consideration or expenditure in respect of which the taxpayer has been recouped or is entitled to be recouped. In other words, the refund of part of the service fee or commission will have the effect of reducing the cost base, indexed cost base or reduced cost base, as the case may be, unless the amount refunded is subsequently used to increase the investment.

COMMISSIONER OF TAXATION
1 June 1989