TR 93/D42 - Income tax: interest on overpayment of tax: objections against income tax assessments

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Draft Taxation Ruling
Income tax: interest on overpayment of tax: objections against income tax assessments

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IT 2381

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What this Ruling is about

1. Under the *Taxation (Interest on Overpayments) Act 1983* (Cth) ("T(IOP)A") a taxpayer who as a result of a successful objection (i.e. an objection allowed wholly or in part by the Commissioner of Taxation, by the Administrative Appeals Tribunal or by a Court) receives a refund of tax paid is entitled to receive interest on the amount of that refund. The Act does not apply to all overpayments of tax nor does it apply to all refunds. It applies to overpayments resulting from decisions on objections. Interest may also be payable on a refund where the Commissioner decides of his own volition to amend an assessment to reduce a taxpayer's liability (Taxation Ruling IT 2381 refers). Most objections giving rise to an entitlement to interest are objections against income tax assessments.

2. This Ruling explains what constitutes a valid objection against an income tax assessment and replaces Taxation Ruling IT 2295. In particular, it explains what an "assessment" is and the requirement that the grounds of objection must be stated "fully and in detail".

Ruling

3. The objection and appeal provisions contained in the various taxation laws administered by the Commissioner have been repealed. New sections granting the right to object have been inserted in the various Acts and a new set of generic objection and appeal provisions have been enacted in Part IVC of the *Taxation Administration Act 1953* (Cth) ("TAA"). The new provisions, which came into force on 1 March 1992, are similar in many respects to the now repealed

provisions of Part V of the *Income Tax Assessment Act 1936* (Cth) ("ITAA").

4. Taxpayers dissatisfied with a taxation decision (i.e. an assessment, determination, notice or decision) who wish to object against it are required to object in the manner set out in Division 3 of Part IVC of the TAA, but it is section 175A of the ITAA which gives taxpayers the right to object against an "assessment".

5. The procedural requirements of section 14ZU (in Division 3 of Part IVC) of the TAA for a taxpayer making a taxation objection are similar to those in the former section 185 of the ITAA. That is, the objection must:

(a) be in writing;

(b) be lodged with the Commissioner within the period set out in section 14ZW (subject to any request for an extension of time); and

(c) state fully and in detail, the grounds that the taxpayer relies upon.

6. These requirements are largely self explanatory. Section 175A of the ITAA and section 14ZU of the TAA, when read together, contain two substantive requirements in respect of valid objections against assessments. They are that an objection can only be made against an "assessment", and the grounds relied upon must be stated "fully and in detail". It is these two substantive elements with which this Ruling is concerned.

7. Where the relevant period for the making of an objection has expired a taxpayer may nevertheless lodge their objection, together with a written request asking that the objection be dealt with as if it had been lodged in time (see also Taxation Ruling IT 2455 as to applications to treat late objections as duly lodged). Where such a request is refused, the taxpayer may, pursuant to subsection 14ZX of the TAA, apply to the Administrative Appeals Tribunal for review of that decision.

Date of effect

8. 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 a 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).

Explanations

Objection Against an "Assessment"

9. The term "assessment" is defined in subsection 6(1) of the ITAA to mean:

(a) the ascertainment of:

(i) the amount of taxable income; or

(ii) in the case of a taxpayer being the trustee of a unit trust that is a corporate unit trust within the meaning of section 102J - the net income of the trust as defined by section 102D; or

(iii) in the case of a taxpayer being the trustee of a unit trust that is a public trading trust within the meaning of section 102R - the net income of the trust as defined by section 102M; or

(iv) in the case of any other taxpayer that is the trustee of a trust estate but excluding a taxpayer that is the trustee of a fund or unit trust referred to in paragraph (a), (b) or (c) of the definition of "eligible entity" in subsection 267(1) - so much of the net income of the trust estate as is net income in respect of which the trustee is liable to pay tax;

and of the tax payable on that taxable income or net income;

(aa) the ascertainment of the amount of interest payable under section 102AAM; or

(b) the ascertainment of the amount of additional tax payable under a provision of Part VII.

10. In the light of the statutory definition of the term "assessment" an objection to a taxpayer's assessment must relate to:

(a) some element in the calculation of taxable income or net income of a trust estate in respect of which the trustee is liable to pay tax, e.g. that a particular receipt was of a capital nature, that a particular receipt was exempt income, that a particular outgoing was an allowable deduction, etc.; or

(b) some element in the calculation of the tax payable, e.g. that the rate of tax applied was incorrect, that a spouse rebate should have been allowed, etc.; or

(c) some element in the ascertainment of the amount of interest payable by the recipient of a distribution from a non-resident trust, e.g. the amount of the distribution, the applicable rate of

tax, the foreign tax credit attributable to the taxpayer's portion of the distributed amount, etc.; or

(d) that the amount of additional tax under Part VII of the ITAA ought to be varied, e.g. that the circumstances giving rise to the additional tax were such that no additional tax was warranted, or that it should have been remitted to a greater extent.

11. A notice of assessment which issues to a taxpayer will generally contain information beyond what is generally comprehended in that definition of "assessment". Where applicable, it will contain details of provisional tax, tax instalment deductions, prescribed payments or foreign tax credits and other credits provided for in the ITAA. It may also contain details of arrears of tax including additional tax and interest payable by way of penalty in respect of late payments. Clearly none of the items mentioned above is within the scope of an "assessment" as defined, and cannot be made the subject of an objection against an assessment.

12. It should be noted that a taxpayer is not prevented from objecting to an assessment notwithstanding that the assessment was based on the taxable income disclosed in the return lodged. It may occur that a taxpayer, after receiving a notice of assessment, realises for example, that a deduction ought to have been claimed for a gift to an institution specified in paragraph 78(1)(a) of the ITAA. It is open to the taxpayer to protect their rights by lodging an objection on the grounds that the gift was an allowable deduction and that their taxable income should be reduced accordingly (subject of course to time requirements). Similarly it is open to a taxpayer to object to an assessment on grounds which will increase the taxable income and tax payable: *Henderson* v *F C of T* 69 ATC 4049; 1 ATR 133.

"Fully and In Detail"

13. In this context it is appropriate to repeat observations made by the High Court many years ago in the case of *R* v. *DC of T (W.A.): ex parte Copley* (1923) 30 ALR 86. The High Court had to consider whether certain letters constituted valid objections under subsection 37(1) of the *Income Tax Assessment Act 1915-1918*. Despite some differences between the wording of subsection 37(1) and the present legislation, the observations of the court apply with equal force to the existing law. At page 87 Knox CJ said:

> "I think it is effective notice of objection under the Act if the written communication is expressed in words that are reasonably calculated to convey to the understanding of the person to whom it is addressed (l) that the taxpayer contends that the assessment

is not in accordance with law; and (2) the grounds on which that contention is based."

Higgins J at page 87 made these observations:

"The word 'objection' used in the section is not technical, and we are to apply its ordinary meaning. The section does not say that the word 'objection' must be used, and, in my opinion, if the fault alleged is stated directly and not inferentially stated in such a manner that the Commissioner may know in what respect his assessment is attacked that is enough. The word 'submit' as used in the letter seems to me to include an objection but with the addition of deference and courtesy."

At page 88 Starke J said:

"It has been laid down in this Court that an objection need not be in formal language, or in language that lawyers would adopt, and that must be so, because the Act has frequently to be acted upon by persons who have no knowledge of the law and who are very often a considerable distance from legal assistance."

14. Subsequently in *H R. Lancey Shipping Co Pty. Ltd* v *FC of T* (1951) 9 ATD 267 Williams J expressed himself in similar vein. His Honour said:

"But he must comply with the Act. The grounds of objection need not be stated in legal form, they can be expressed in ordinary language, but they should be sufficiently explicit to direct the attention of the respondent to the particular respects in which the taxpayer contends that the assessment is erroneous and his reasons for the contention."

15. It is unnecessary to expand on what the High Court has said. In practice it will be the case that many objections are lodged by tax agents, accountants or solicitors and the grounds of objection will clearly be stated fully and in detail. On the other hand, many taxpayers personally prepare and lodge their own income tax returns and generally attend to their own income tax affairs. They are not to be discriminated against or penalised because they may not use precise terminology in expressing dissatisfaction with an assessment. As a general rule a letter or document from a taxpayer or their authorised agent which indicates that an assessment is wrong in a particular respect and the reasons for its being wrong, should be treated as satisfying the requirement of being stated fully and in detail.

16. Although the observations of the High Court make it clear that a taxpayer is not restricted to any particular form of words in lodging an objection against an assessment, it is equally clear from other decisions of the High Court that vague or general challenges to an assessment would not qualify as valid objections. A statement, for

example, that an assessment is wrong in fact and law is not considered to be a statement of grounds fully and in detail. Sometimes letters from taxpayers are really complaints against the taxation system generally - they are not to be treated as objections.

17. Clearly it is not possible to envisage all situations which may arise in practice. Wherever practicable taxpayers who seek advice about lodging objections should be referred to the specimen form of objection in the First Schedule to the Income Tax Regulations. If any doubt arises in a particular case, as to whether a letter from a taxpayer expresses fully and in detail dissatisfaction with an assessment, the doubt should be resolved in favour of the taxpayer.

Examples

18. Examples of possible wording in dispute letters could be as follows.

Example 1

"I forgot to claim a rebate for my spouse, the relevant details being... Would you please amend my assessment to allow the claim"

19. The first sentence of this example does not say that the assessment was wrong - it merely states that the taxpayer omitted a claim from their return. However, as the second sentence (particularly when read with the first) clearly indicates that the taxpayer considers the assessment to be incorrect, this example satisfies the requirements for an objection. It is a valid objection (subject to requirements as to time being satisfied).

Example 2

"I request the further remission of additional tax imposed for incorrect return in my 1992 assessment for the following reasons..."

20. The definition of "assessment" in subsection 6(1) specifically includes "the ascertainment of the amount of additional tax payable under a provision of Part VII." Consequently, the taxpayer has indicated that they consider the assessment to be excessive in a particular respect (viz. incorrect return penalty) and the grounds for that view. It cannot be said that the taxpayer has not indicated their dissatisfaction when they clearly ask for one part of the assessment to be reduced. The fact that the taxpayer has used the polite word "request" rather than "object", "appeal" or "protest" does not detract from the fact that they have met the requirements for an objection.

This is therefore a valid objection (subject to requirements as to time being satisfied).

Example 3

"I hereby request an amendment to my income tax assessment for the above year. I consider that the assessment was incorrect in that I should have been allowed a deduction of $1,000 for meals. Following incorrect advice from the Tax Office I did not include this claim in my return. The reasons why this claim is allowable are..."

21. The issue whether a request for amendment under subsection 170(6) can constitute a valid notice of objection is raised by this example. If a document uses the words "request for amendment" (and even if it bears such a heading), it nevertheless will constitute a valid objection provided it meets all the requirements for a valid objection. This example clearly indicates that the taxpayer considers the assessment to be incorrect in a particular respect, and would be a valid objection (subject to requirements as to time being satisfied)

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- R. v. DC of T (W.A.); ex parte Copley (1923) 30 ALR 86
- H. R. Lancey Shipping Co Pty Ltd v. FCT (1951) 9 ATD 267