TD 92/D219 - Income tax: under what circumstances is the receipt of a lump sum out of court settlement payment assessable income under subsection 25(1) of the Income Tax Assessment Act 1936?

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Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: under what circumstances is the receipt of a lump sum out of court settlement payment assessable income under subsection 25(1) of the *Income Tax Assessment Act 1936*?

1. It is assessable income under subsection 25(1)

a) where the receipts are compensation for losses of an income nautre only e.g. past year profits, interest; and

- where there was no expectation of any capital receipts being received e.g. loss of reputation; and

- even if the basis of calculation of the lump sum cannot be determined.

b) where receipts are of both an income and capital nature and the basis of calculation of the income component can be determined.

2. The decision in *FC of T v. Spedley Securities Limited* 88 ATC 4126; (1988) 19 ATR 938 does not apply in these circumstances. The Full Federal Court in its reasons concluded:-

'The payment made was in settlement of a number of claims as evidenced by the matters put during the settlement discussions and negotiations.'

'There was therefore evidence upon which the Tribunal could hold that the payment was, at least in a substantial part, recompense for damage to its reputation.'

`The point of the present case is that what was received was a lump sum, the ingredients of which were not identified...'

Commissioner of Taxation
26/11/92

FOI INDEX DETAIL: Reference No.
Related Determinations:
Related Rulings:
Subject Ref: assessability; lump sums; settlement sums
Legislative Ref: ITAA 25(1)
Case Ref: *FC of T v. Spedley Securities Limited* 88 ATC 4126; (1988) 19 ATR 938
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