


IT 106 - Compensation and insurance recoveries, Darwin cyclone

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COMPENSATION AND INSURANCE RECOVERIES, DARWIN CYCLONE

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COMPENSATION PAYMENTS

25(1)

INSURANCE RECOVERIES

26(j)

CYCLONE DAMAGE PAYMENTS

FACTS

Consideration has been given to the assessability of compensation payments and insurance recoveries paid in respect of damage caused by Cyclone Tracy to real property used in the production of assessable income.

2. The nature of the payments under the Darwin Cyclone Damage Compensation Act 1975 emerges from the following extract of the Second Reading Speech.

"The compensation proposals have been very carefully considered by an inter-departmental committee and by the Government. They are a departure from previous Australian Government initiatives in response to natural disasters. Unlike previous disasters, Darwin is in a unique situation. It is situated in an Australian Territory for which the Australian Government is responsible. Geographically it is isolated with no near lying city of any size from which its residents could receive support, nor to which they could be relocated after the disaster. Thousands had to be evacuated from the city, some without choice, many of whom have as yet been unable to return. The almost total destruction caused by the cyclone was of a kind unknown in Australia. It was in every sense a major disaster even by international standards. As such the situation calls for unique measures."

3. The extract illustrates that payments were to be made to all persons affected by "Cyclone Tracy" regardless of their income producing activities.

RULING

4. It is now considered that payments under the Darwin Cyclone Damage Compensation Act 1975 cannot be correctly characterised as income and should not be taken into account for any purposes of the Income Tax Assessment Act. Payments under the Act are essentially gifts from the Commonwealth Government by way of relief from the havoc caused by the cyclone.

5. Nor is it considered that the payments are indemnities

within the meaning of section 26(j) even though that term has been given a wide meaning, cf. FC of T v Wade (1951) 84 CLR 105 and Goldsborough Mort & Co. Ltd. v FC of T 76 ATC 4343, 6 ATR 580. Whatever the limits of the meaning of the term "indemnity" there is inherent in the concept of it that, at some time prior to making the payment, an undertaking had been given by the payer or some other person that the recipient of the payment would be kept secured against or compensated for, possible loss and that the payment was made in satisfaction of the undertaking. These elements are lacking from payments made under the Act.

Insurance Recoveries

6. To the extent that an insurance recovery related to repairs to income producing property it may well be that section 26(j) would authorise its inclusion in assessable income. A firm decision on this question could only be made, however, in the light of all the relevant facts.

7. Assuming that an amount is to be included in assessable income under section 26(j) the question arises in which year it is to be included, particularly in a situation where the relevant repairs are not carried out until some time after receipt of the insurance recovery. The terms of section 26(j) make it clear that any amount to which the section applies is to be included in the assessable income of the year of receipt. The section does not enable an insurance recovery to be set-off against the cost of repairs in a year subsequent to the receipt of the insurance recovery.

COMMISSIONER OF TAXATION