IT 2230 - Income tax : loss of licence insurance

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TAXATION RULING NO. IT 2230

INCOME TAX : LOSS OF LICENCE INSURANCE

F.O.I. EMBARGO: May be released

REF H.O. REF: 83/5852 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I1194386	LOSS OF LICENCE INSURANCE 51(1) INSURANCE PREMIUMS - LOSS OF LICENCE	

PREAMBLE In a decision handed down by Taxation Board of Review No.1, the issue was whether an airline pilot was entitled to a deduction under sub-section 51(1) of the Income Tax Assessment Act of $350 or part thereof in respect of a premium paid for cover under a Loss of Licence Insurance Plan. The Board's decision is reported as Case R100 84 ATC 658 and Case 153 27 CTBR (NS) 1188.

FACTS 2. The taxpayer contributed to a Voluntary and Contributory Loss of Licence Insurance Plan which was offered by the Government Insurance Office of New South Wales. The three types of potential benefits payable under the Plan were "Monthly Payments", "Capital Benefits-Lump Sum Payments" and "Death Benefits". A contributor who was temporarily unable to carry out normal flight duties as a result of bodily injury, illness or natural deterioration (i.e. medical condition of the body or any part thereof not attributable to any detectable clinical symptom or injury) was eligible for a payment of 1.5% per month of the appropriate Nominated Capital Benefit (the insured sum).

3. Subject to circumstances of hardship, monthly payments would only commence upon the expiration of the contributor's normal sick leave credits or after 90 consecutive days of disablement, whichever was the later. In any event, the monthly benefits only extended for 27 months or until the contributor's return to duty, or his death, or until his licence was deemed to be permanently lost, which ever occurred first. However, contributors who suffered from psychotic or psychoneurotic illnesses, or illnesses of a nature as to be incapable of diagnosis by objective medical evidence, received immediate monthly payments. The duration of these monthly payments and the amounts payable were dependent upon the length of time which the contributor had been contributing.

4. Upon permanent suspension or cancellation of the contributor's licence, the Plan provided for the payment of a lump sum capital benefit (the insured sum) reduced by any monthly payments made prior to the contributor becoming entitled

to the lump sum payment. Similarly, the Plan provided for the insured sum, net of any monthly benefits made, to be paid directly to the contributor's family in the event of death.

5. Based on the authority of the Full High Court decision in FCT v. D.P. Smith 81 ATC 4114 11ATR 538 the Board concluded that the amount of the premium paid by the taxpayer which was deductible under sub-section 51(1) was only that part of the premium which was attributable to the potential benefits payable under the policy which, if paid, would constitute assessable income for income tax purposes.

6. In relation to the assessability of benefits receivable under the Plan, the Board held that while the monthly indemnity payments would constitute assessable income (F.C. of T. v. D.P. Smith) it rejected the taxpayer's submissions that the lump sum benefits were also in the nature of income. The lump sum benefits were payments made once and for all in consequence of the loss of the contributor's capital asset, his licence to fly, and were of a capital nature.

7. It then remained for the Board to determine what proportion of the premium was referable to the potential income benefit for the purposes of sub-section 51(1).

8. An actuary employed by the underwriter of the Plan who had been called to give evidence was unable to accurately quantify the proportion of the premium attributable to the potential monthly benefits. At best, and by ignoring certain contingencies, the actuary estimated that the amount of the premium attributable to the income benefits was 43%. In arriving at this estimate, the actuary ignored the potential death benefit payable under the Plan and also ignored the requirement that the monthly payments only commence upon the expiration of the contributor's sick leave credits or after 90 consecutive days of disablement. He also assumed that the payment of the income benefit would continue for the full 27 months.

9. Having regard to the actuarial calculations and after making some allowance for the various contingencies not taken into account by the actuary, the Board (by majority) held that 10% of the total premium was the cost to the taxpayer of securing his entitlement to the monthly income benefit. The majority members opined that the inability of the actuary to determine with precision the amount of the premium attributable to the potential income benefits did not necessarily preclude the deductibility of some part of the premium. It was a matter of fact what proportion of the premium was fairly and properly attributable to gaining the assessable income. cf Ronpibon Tin N.L. v. FCT (1949) 78 CLR 47 at page 61.

RULING

10. No appeal has been lodged against the decision of the Board.

11. The decision should be applied in comparable fact situations where taxpayers have paid premiums in respect of loss

of licence insurance policies which provide for payment of periodic benefits of an income nature as well as benefits of a capital nature.

12. While the amount to be allowed in a particular case will need to be determined having regard to the terms and conditions of the loss of licence insurance policy, it may generally be accepted that in situations where the benefits payable under the terms of the insurance policy are similar to those described in paragraphs 2, 3 and 4 above, and are essentially geared towards the payment of a capital sum for the loss of a contributor's capital asset - the licence to fly - a deduction of 10% of the premium paid would represent a proportion fairly and properly attributable to the potential income benefits payable under the policy.

13. In situations where a greater deduction is sought, the taxpayer will need to furnish additional information such as an actuarial certificate from the insurer outlining the basis upon which the calculation has been made.

COMMISSIONER OF TAXATION
31 December 1985

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