IT 2262 - Income tax : liability - amateur athletes (resident and non-resident) trust funds and other payments

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TAXATION RULING NO. IT 2262

INCOME TAX : LIABILITY - AMATEUR ATHLETES (RESIDENT AND NON-RESIDENT) TRUST FUNDS AND OTHER PAYMENTS

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

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		ENTERTAINER'S ARTICLE IN DOUBLE TAX AGREEMENTS

PREAMBLE The rules of the International Amateur Athletic Federation provide that an amateur athlete may allow his/her name, picture or athletic performance to be used for advertising provided it is in connection with a contract for sponsorship or equipment entered into by the national governing body. Participation moneys may also be paid by the organiser of an approved International Invitation meeting for certain athletes to compete at the meeting. An agreed proportion of moneys from both sources is paid into a trust fund established and controlled by the national governing body for the benefit of the athlete.

2. Rule 17 of International Amateur Athletic Federation Constitution provides for the establishment of funds for the benefit of athletes. The funds must be held, controlled and administered by a Member Federation. The general rules for administration of athletes' funds will depend on the laws and practice of each country. However, the general principles followed are:

(a) In any contract for consultation, equipment or advertising only the Member Federation must be a party to the contract with the advertiser or sponsor.

(b) Any moneys payable under the contract must be paid to the Member Federation. The contract must not permit the advertiser or his agent to control the events in which the athlete participates.

(c) At the time of entering into the contract there must be

agreement between the Member Federation and the athlete involved about the following matters:-

(i) The proportion of the moneys to be held in the fund for the benefit of the athlete and the proportion to be retained by the Member Federation.

(ii) The detailed administrative arrangements.

(iii) Acknowledgment of any obligations of the athlete to the Member Federation and to the sponsors.

(d) Where a contract entered into requires the use of an athlete's name, person or image for advertising purposes the athlete's consent to the detailed arrangements must be obtained.

(e) The proportion of the moneys to be held for the benefit of the athlete must be held separately from the general funds of the Member Federation.

(f) Distributions may be made from an athlete's trust fund to cover expenses incurred by the athlete on transport, travel, insurance, meals, lodging and a subvention for hardship in attending specified competitions.

(g) Payment of the residue of the fund to athletes or their personal representatives is permitted in the following circumstances -

(a) Voluntary retirement from competition.

(b) Unavoidable retirement because of illness or injury.

(c) Death prior to retirement from competition.

(h) An athlete can request that the amount in his/her trust fund be paid to him/her at any time. However, where the amount is paid to him/her, other than in the abovementioned circumstances, the athlete would lose his/her amateur status.

(i) An athlete may not assign, charge or mortgage the residue of the funds or in any way borrow against them.

(j) If an athlete changes his/her Member Federation the balance of the moneys held in the fund must be transferred, if the athlete so requests, to a new fund, held by his/her new Member Federation.

3. The Australian Athletic Union (AAU) is the Australian member of the International Amateur Athletic Federation. In

addition to administering trust funds in accordance with the above International rules, AAU is also involved in obtaining moneys for amateur athletes (resident and non-resident) in the following circumstances:-

(a) negotiating sponsors to provide assistance to athletes with expenses necessary to pursue their athletic careers;

(b) providing grants or scholarships from AAU funds or funds offered by sponsors to assist athletes in their athletic careers; and

(c) seeking grants from Commonwealth, State or local governments to athletes to assist them in their athletic careers.

RULING

4. Money paid into an athlete's trust fund in accordance with the rules of the International Amateur Athletic Federation is income of the athlete - it is, in essence, a reward for the athlete's services whether the services relate to advertising or the participation in athletic events.

5. Furthermore, liability to tax arises in the year the money is paid into the athlete's trust fund - it is at that point of time that it is derived by the athlete. It is not necessary that the money be paid direct to the athlete before it can be said to have been derived by the athlete. The reason for this is to be found in section 19 of the Income Tax Assessment Act which deems income to have been derived by a person although it is not actually paid out to him/her but is, among other things, accumulated or otherwise dealt with on his/her behalf or as he/she directs.

6. Interest or other income derived from the investment of moneys in an athlete's trust fund would be subject to the income tax law relating to trusts. Having regard to the rules relating to an athlete's trust fund, it is considered that an athlete would at all times be presently entitled to the income arising from the investment of moneys held in trust on his/her behalf. It would be a situation for the application of section 97 in the case of an adult athlete or section 98 where the athlete is a minor.

7. Payments to an athlete out of trust moneys held on his/her behalf would not be assessable income of the athlete. Nor would there be any income tax liability when the balance of moneys held on behalf of an athlete were handed over to the athlete unless the balance handed over included some investment income derived in the year of hand over and which would be liable to tax under sections 97 or 98.

8. As a general rule expenses incurred by an amateur athlete would not be allowable as income tax deductions - they could not be said to be incurred in gaining or producing assessable income as the income tax law requires. However, expenses incurred by an amateur athlete in relation to an amount

paid into an athlete's trust on his/her behalf, e.g. travelling expenses to participate in the event in respect of which the amount is paid, would qualify for income tax deduction.

9. Where an Australian athlete participates in events overseas and, in accordance with the international rules, amounts are paid into the athlete's trust fund on account of his/her participation, there may be a liability to tax in the overseas country of participation. If there is a liability to tax in an overseas country in respect of the amount paid and the athlete establishes that the tax has been or will be paid paragraph 23(q) of the Income Tax Assessment Act would operate to exempt the amounts from Australian tax.

10. Australia has comprehensive agreements with a number of overseas countries for the avoidance of double taxation. The general position under the agreements is that, if an Australian athlete derives income from participation in events in the countries, the income is to be taxed in the countries and exempt from Australian tax. There is a variation in the United States Agreement which operates to provide that where the amount earned by an Australian athlete from participation in events in the United States does not exceed $US10,000, or the Australian equivalent thereof, the amount is subject to tax in Australia and not in the United States.

11. The operation of the proposed foreign tax credit system announced by the Treasurer in his September 1985 statement on "Reform of the Australian Taxation System" is not dealt with in this Ruling. The proposals are not intended to operate until 1 July 1987.

12. Of the payments referred to in paragraph 3 above, sponsor provided assistance to athletes to assist them in meeting expenses necessary to pursue their athletic careers would not be assessable income. As a corollary the expenses would not be allowable income tax deductions to the athletes. The terms and conditions of grants or scholarships paid either from AAU funds or from government sources would need to be examined before deciding the income tax implications.

13. Where an athlete from another country participates in Australian events and, in accordance with the international rules, an amount is paid into the athlete's trust fund, the amount is liable to tax in Australia - it represents income derived by a non-resident from sources in Australia. As indicated in paragraph 11 above double tax agreements entered into by Australia generally confer upon Australia the right to tax the amounts. Section 255 of the Income Tax Assessment Act would require the body, organisation, etc. responsible for the payment of the amount to retain and remit to the Taxation Office a sum sufficient to meet the athlete's income tax liability.

14. As with resident athletes, the terms and conditions of any scholarship or grant paid by AAU to non-resident athletes would need to be examined before the income tax implications could be determined.

15. This Ruling only relates to payments made to athlete's trust funds, i.e. payments made to individual athletes in their own right. Where athletes are not participating in their individual capacity but as representatives of athletic associations, etc. in their home countries, payments to the athletic associations, etc. in the home countries would be exempt from Australian income tax under paragraph 23(c)(i) of the Income Tax Assessment Act.

COMMISSIONER OF TAXATION
7 March 1986

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