IT 2403 - Income tax : purported assignment of proportion of salary and wages ineffective

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TAXATION RULING NO. IT 2403

INCOME TAX : PURPORTED ASSIGNMENT OF PROPORTION OF SALARY AND WAGES INEFFECTIVE

F.O.I. EMBARGO: May be released

REF H.O. REF: 85/17015-5 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210936	ASSIGNMENT OF INCOME - SALARY AND WAGES ALIENATION OF INCOME - SALARY AND WAGES INCOME SPLITTING SALARY AND WAGES - PURPORTED ASSIGNMENT INEFFECTIVE	260

OTHER RULINGS ON TOPIC IT 2330

PREAMBLE In a decision dated 17 December 1986 the Administrative Appeals Tribunal (Mr H.R. Stevens, Senior Member) has held that a document purporting to assign a share of an employee's salary and wages to his wife was not effective for income tax purposes. The decision is reported as Case U11 87 ATC; 18 ATR Case 23.

FACTS 2. The taxpayer was a manager employed by a co-operative society. Returns of income for the years ended 30 June 1979 and 1980 disclosed salaries of $17,947 and $19,747 respectively subject to the claim that 10% of the gross salary in each year had been assigned to his wife.

3. The taxpayer's salaries were paid into a joint cheque account held with his wife and drawings were made by both to meet normal domestic needs and for the education of their children. A pro forma document bearing a date 28 September 1978 was admitted as evidence (subject to weight and relevance) and purported to be a deed of assignment. The Tribunal had difficulty in accepting that the document had been signed by the taxpayer and his wife and that the date it bore was its true date of execution. However, the Tribunal proceeded on the assumption that the document had been duly executed. It recited that the parties agreed that the Assignor, as beneficial recipient, for consideration:

"... assign transfers and sets over to the Assignee

1. (a) All his right, title and interest in all wages and salaries derived by the Assignor to the extent of 10%

of all such wages and salaries.

(b) All his right, title and interest in 10% of the future wages and salaries earned by the Assignor from any mode of employment".

4. The employer was not informed. The wife had for many years exercised her right to draw on the joint cheque account. Despite this the taxpayer claimed that the assignment was intended to give her some money for personal items. However, in cross-examination he agreed that there was no purpose other than reducing income tax. The taxpayer ceased work in 1980.

DECISION OF THE TRIBUNAL

5. Mr Stevens, held that the case was governed by Norman v. FCT (1962-63) 109 CLR 9; that all that the assignee could claim was the fruits after they had been first derived by the taxpayer; that the language used in the relevant document made it clear that what was assigned was a proportion of the wages and salaries derived by the Assignor - that is, a subject matter to come into existence in the future. Accordingly, he considered that the Commissioner's decisions on the objections should be affirmed.

6. The Tribunal accepted that the decisions reached by Taxation Boards of Review in Case J27 (1958) 9 TBRD 136 and Case J51 (1958) 9 TBRD 264 were correct. The Tribunal held that the taxpayer could not assign his contract of employment carrying with it a right to future income but only mere future income and that its views therefore fitted precisely within the words of Barwick CJ, Steven, Mason and Wilson JJ, in FCT v. Everett (1980) 143 CLR 440 at pp 450/451 viz:

> ".... a like assignment of mere future income, disassociated from the proprietary interest with which it is ordinarily associated, takes effect when the entitlement to that income crystallizes or when it is received, and not before".

If it had been necessary, Mr Stevens said that he would have found that the provisions of section 260 of the Income Tax Assessment Act operated.

RULING

7. The Tribunal's decision is consistent with the long held official understanding, stated in Taxation Ruling No.IT 2330, that income from the rendering of personal services cannot be dealt with as to make it liable to income tax to any person other than the person who rendered the personal services. It also lends support to the present office practice of relying on the operation of section 260 of the Act in cases of this nature.

COMMISSIONER OF TAXATION
28 May 1987