# *IT 2408 - Income tax : income splitting : insurance commissions*



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TAXATION RULING NO. IT 2408

INCOME TAX : INCOME SPLITTING : INSURANCE COMMISSIONS

F.O.I. EMBARGO: May be released

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| REFERENCE NO: | SUBJECT REFS: | LEGISLAT. REFS: |
|---|---|---|
| | INCOME SPLITTING | 260<br>PART IVA |

OTHER RULINGS ON TOPIC IT 25, IT 276, IT 2121, IT 2330

PREAMBLE Taxation Rulings Nos. IT 2121 and 2330 deal with the income tax implications of the use of trusts and companies as vehicles for splitting income derived from the rendering of personal services. Since the release of the Rulings this office has had occasion to consider the extent to which commissions derived by insurance agents represent income derived from the rendering of personal services within the meaning of the two Rulings.

2. Commissions paid to insurance agents fall into the following categories:-

Initial Commissions

Paid in respect of new policies written.

Renewal Commissions

Paid on the annual renewal of a policy and calculated on the amount of premium initially paid.

CPI Commissions

Paid in the same circumstances as renewal commissions but are calculated on the difference between the actual renewal premium and the premium initially paid.

Orphan Policy Commissions

An orphan policy is one where there is no longer an originating agent. Orphan policies are allocated by insurance companies to other agents. Renewal and CPI commissions on orphan policies are paid to the other agents.

Production Volume Bonus

Production volume bonuses arise where an agent creates a master agency which, in essence, is a team organisation comprising the agent as master agent and a number of other agents. The master agent provides office facilities, etc. for the use of the team. A production volume bonus is paid to the master agent where the team production exceeds a given level in any one calendar year. Additional bonuses are paid for every additional level reached by the team in a year.

Overriding Commissions

Paid to a master agent on the sales produced by the agents working with him and is calculated on the sales or commissions volume produced by the agents.

Recruiting Bonus

Paid to a master agent as overriding commissions in respect of insurance business obtained by persons outside the team.

3. There exists in the insurance industry a concept known as "a register". When an insurance agent first sells a policy the insurance company records the agent's name against the policy as the originating agent. The originating agent is automatically paid a renewal commission on the renewal of the policy. The renewal of a policy does not normally require any act by the originating agent - in practice the insurance company sends advice of renewal to the policy holder and in return receives the renewal premium. If action is needed by an originating agent in relation to the renewal of policies it is ordinarily undertaken by secretarial staff. The personal attention of an agent is rarely required.

4. The record of an agent's name as an originating agent constitutes the register. To put it another way, an originating agent has recorded against his name all the policies sold by him as an originating agent. In addition, the register will include details of orphan policies allocated to the particular agent. Renewal commissions, CPI commissions and orphan policy commissions are automatically paid to the originating agent.

5. The sale of registers is common practice in the insurance industry. Approval of insurance companies is necessary for the sale but is rarely withheld. Where a sale of a register occurs the purchaser becomes entitled to payment of renewal, CPI and orphan policy commissions.

RULING 6. It is accepted that an insurance register is an income producing asset in its own right and is as much capable of being property the subject of a trust as any other income producing property. Income arising from the ownership of an insurance register is not income from personal services in the context of Taxation Rulings Nos. IT 2121 and 2330. Where, therefore, an insurance agent creates a trust in respect of an insurance register in favour of family members the effectiveness of the arrangement for income tax purposes will depend upon the considerations referred to in paragraphs 19-22 of Taxation

Ruling No. IT 2121 and paragraphs 15-32 of Taxation Ruling No. IT 2330 in relation to the transfer of income producing assets.

7. Income derived by an insurance agent from initial commissions, production volume bonuses, overriding commissions and recruiting commissions is to be treated as income from the rendering of personal services for the purposes of Taxation Rulings Nos. IT 2121 and 2330.

8. Where an insurance agent creates a trust in respect of an insurance register and transfers the register to a trustee it is not likely that there will be any outward change in the conduct of the insurance agent's income producing activities. It will be necessary, therefore, for the insurance agent and the trustee to ensure that commissions paid by the insurance company are correctly segregated, i.e. that commissions paid on the register are received into the trust and dealt with according to the terms of the trust. Similarly there will be a need for losses and outgoings incurred in gaining the commissions to be properly segregated between the commissions derived by the insurance agent and the commissions derived by the trustee.

COMMISSIONER OF TAXATION
18 June 1987