


IT 334 - Abnormal income - artists amounts received from sale of paintings

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TAXATION RULING NO. IT 334

ABNORMAL INCOME - ARTISTS AMOUNTS RECEIVED FROM SALE OF
PAINTINGS

F.O.I. EMBARGO: May be released

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ABNORMAL INCOME -
ARTISTS

158C(2)

DIVISION 16A - ARTISTS
SALE OF PAINTINGS
ARTISTS - TREATMENT
OF INCOME
LUMP SUM EARNINGS
RECURRENT EARNINGS

PREAMBLE

Consideration has been given to the application of Division 16A of the Income Tax Assessment Act 1936 to proceeds arising from the sale of paintings by artists.

RULING

2. Generally, an amount received by an artist for the outright sale of a painting, whether received in a lump sum or in instalments, is not considered to fall within the definition of "lump sum earnings". The view is taken that, normally, the nature of such a transaction would be the sale of a chattel, viz. the painting itself, and the sale price would substantially, if not wholly, be consideration for the chattel rather than for the sale or assignment of the artist's copyright in the work. Although the sale by an artist of a painting might involve assignment of the copyright in the painting, it would be only in exceptional cases that the sale price could be regarded as consideration for the assignment of copyright.

3. It is considered, however, that a sum received by an artist for the outright sale of his or her painting would, in general, be an amount received, otherwise than by way of royalties, in respect of an artistic work. On this basis and provided the amount is not remuneration for the employment of, or services rendered by, the artist, such an amount could qualify as "recurrent earnings" for the purpose of Division 16A.

4. Where an artist is commissioned to produce an artistic work the amounts received by way of commission are not "lump sum earnings" for the purposes of Division 16A. The question whether such receipts constitute "recurrent earnings" is one which can only be determined on the particular facts of each individual case having regard to the precise nature of the contractual arrangements between the parties.

5. As a general rule, a commission fee paid in circumstances where the artist is required to do little more than provide his or her skill and labour in producing the artistic work would be remuneration for services rendered. Amounts received by way of remuneration for the employment of, or services rendered by, an artist, whether received in one sum or not, are excluded from both categories of "abnormal income".

6. In some cases, an artist may be required to meet quite substantial costs in producing the artistic work that he or she is commissioned to produce. Where the contract is of this nature it is the practice of this Office to accept the proceeds as "recurrent earnings".

COMMISSIONER OF TAXATION