

# ***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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F.O.I. INDEX DETAIL

REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

I 1103271	ABNORMAL INCOME -	158C(2)
	ARTISTS	
	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