

CASE SUMMARY

Taxation Review Authority confirms that backdated ACC weekly compensation is taxed in the year of receipt

Decision date: 01 October 2021

CSUM 21/09

CASE

Disputant v Commissioner of Inland Revenue [2021] NZTRA 3

LEGISLATIVE REFERENCES

Income Tax Act 2007, s BD 3;

Accident Compensation Act 2001, s 252.

LEGAL TERMS

Backdated ACC weekly compensation; income; derive; cash or accruals basis.

Summary

The disputant challenged her income tax assessment for the tax year ended 31 March 2018 (**the Period in Dispute**). The Accident Compensation Corporation ("**ACC**") made a gross payment of \$180,951.22 (**the Weekly Compensation Payment**) to the disputant in the Period in Dispute. The Commissioner of Inland Revenue ("**the Commissioner**") taxed the entire Weekly Compensation Payment in the Period in Dispute when the disputant received it.

Impact

This decision affirms that an individual who has no trade, and who receives backdated ACC weekly compensation, is taxed on a cash basis (ie, in the year of receipt) in accordance with s BD 3(2) of the Income Tax Act 2007 ("**the ITA 2007**"). The decision also confirms that the High Court case of *Hollis v Commissioner of Inland Revenue* (2010) 24 NZTC 23,967 (HC), is still the leading authority in this area of the law.

Facts

In September 2013, the disputant injured her left wrist and hand at her work with the Auckland Council when she lifted a two-litre bottle of milk out of the fridge.

In December 2013, the disputant resigned from her employment with the Auckland Council with her final day of work being 30 January 2014. Between September 2013 and May 2014, the disputant consulted with medical professionals for both the left wrist injury and for pain she was experiencing in her right wrist. The pain in her right wrist was due to an injury she obtained in 1993, diagnosed as a gradual process injury, whilst employed as an auditor with the Inland Revenue Department.

The disputant was certified unfit for work by Work and Income New Zealand ("**WINZ**") and ACC on 6 August and 29 October 2014 respectively.

The disputant set up a consultancy business in environmental sustainability and planning consents and completed a 10-day contract with the Environmental Protection Authority in March/April 2014.

In August 2014, the disputant applied for a WINZ benefit and provided a medical certificate in support from her GP.

In October 2014, the disputant's GP lodged a claim for left carpal tunnel syndrome arising from the left wrist/hand injury, and the disputant sought weekly compensation from ACC from 22 April 2014.

On 24 May 2017, ACC was directed to investigate and determine the claim for weekly compensation arising from the disputant's covered injuries for her right hand and wrist.

On 11 October 2017, ACC wrote to the disputant informing her that:

- during the period 22 April 2014 to 17 September 2017, she didn't receive the full amount of weekly compensation that she was entitled to;
- the Weekly Compensation Payment had been calculated to be an amount of \$188,386.95 before tax; and
- weekly compensation is taxed in the year in which it is received, not the year to which the payment relates.

On 9 November 2017, the disputant received the Weekly Compensation Payment from ACC (less the tax that had been deducted).

Issues

The issues that the Taxation Review Authority ("**the Authority**") was required to determine are:

- What is the correct tax treatment of the Weekly Compensation Payment; and
- Is there a discretionary power for the Commissioner to apply a different tax treatment?

Decision

Tax treatment of the Weekly Compensation Payment

The disputant's general thrust of her argument was that derivation is a flexible concept and could be adapted to allocate the Weekly Compensation Payment to prior income years (2015 to 2018) to reduce the effective tax rate in her case. The Authority noted that if the disputant were correct, and she derived the income during the 2015 to 2018 income years as it accrued, she would have been obliged to include the income in her tax returns and pay tax.

If an attempt were made to go back and amend assessments from earlier years, the disputant would potentially be liable for late payment penalties and use of money interest.

The Authority rejected all of the disputant's contentions; not only because of the long line of authority but because they were fundamentally flawed in principle. The Authority held that taxing backdated weekly compensation payments in the year of receipt is long established and a deliberate policy setting in the ITA 2007, as well as the complementary payment provisions in the Accident Compensation Act 2001.

Discretionary power

The Authority noted that in exceptional circumstances the Commissioner has power to alter the usual application of tax law, but usually there is no general discretionary power to exempt taxpayers from tax law.

The disputant submitted that taxing the Weekly Compensation Payment in the year of receipt was so reprehensible that it triggered an extraordinary discretionary power. The Authority held that this argument had no merit, and that taxing backdated weekly compensation payments in the year of receipt is long-standing and settled law.

About this document

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