

CASE SUMMARY

High Court reconfirms that backdated ACC weekly compensation is taxed in the year of receipt

Decision date: 31 August 2022

CSUM 22/04

CASE

Veronica Anne Hoeberechts v Commissioner of Inland Revenue [2022] NZHC 2200.

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; discretion.

FORUM

High Court

REVENUE TYPE(S)

Income Tax

Summary

In November 2017, the Accident Compensation Corporation (“ACC”) made a gross payment of \$188,386.95 (“the ACC Weekly Compensation Payment”) to Ms Hoeberechts. The Commissioner of Inland Revenue (“the Commissioner”) assessed \$150,000 of that amount as taxable on a cash basis and taxed the amount in the tax period when Ms Hoeberechts received it, namely the year ended 31 March 2018 (“the Period in Dispute”). On 1 October 2021, the Taxation Review Authority (“the Authority”) dismissed Ms Hoeberechts challenge to her income tax assessment for the Period in Dispute.

Any appeal of the Authority’s decision was required to be filed in the High Court (“the Court”) by 1 November 2021. Ms Hoeberechts failed to file an appeal in the required time and sought the Court’s discretion to extend the time to file. Ms Hoeberechts also sought an order from the Court dispensing with the requirement that she pay security of costs and for the appointment of an *amicus curiae*. The Commissioner opposed the application.

Impact

The decision reaffirms 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 *Hollis v Commissioner of Inland Revenue* (2010) 24 NZTC 23,967 (HC), is still the leading authority in this area of law and continues to apply so long as income tax legislation continues to use (as it does) general terms such as “income” and “derive”. Finally, the decision reiterates the higher courts position that liability under income tax legislation is imposed by statute and not by the Commissioner.

Facts

The ACC Weekly Compensation Payment received in November 2017 was in respect of an injury that Ms Hoeberechts suffered in 2014. The ACC Weekly Compensation Payment resulted from a decision of the District Court in 2017, overturning ACC’s view of Ms Hoeberechts’ entitlement. The ACC Weekly Compensation Payment was therefore backdated compensation, being in respect of shortfalls in compensation ACC should have paid to Ms Hoeberechts.

ACC allocated the ACC Weekly Compensation Payment in the following way:

- ACC paid \$38,386.65 to the Ministry of Social Development in respect of the taxable benefit that Ms Hoeberechts had received from it from April 2014 to September 2017; and

- ACC treated the balance of the payment (roughly \$150,000) as a PAYE payment, paying the tax due to Inland Revenue and the remainder to Ms Hoeberechts.

The Commissioner assessed the \$150,000 as taxable on a cash basis for the tax year ended 31 March 2018. Ms Hoeberechts challenged that assessment before the Authority arguing that rather than taxing the ACC Weekly Compensation Payment in the year of receipt, it should have been taxed on an accrual basis – that is, spread across the tax years ended 31 March 2015 to 2018. She also argued that the Commissioner had a discretion to apply the lower tax rates that would have applied had the ACC Weekly Compensation Payment been allocated to the tax years over which her entitlement to ACC compensation had accrued. Ms Hoeberechts also argued that the conduct by the Commissioner was “reprehensible”.

In a decision dated 1 October 2021, the Authority rejected all of Ms Hoeberechts’ contentions and confirmed the Commissioner’s assessment for the Period in Dispute. The case manager emailed the decision to Ms Hoeberechts advising her that any appeal must be brought within 20 working days. The final day for Ms Hoeberechts to file her appeal was 1 November 2021. She filed her appeal late. Ms Hoeberechts’ letter seeking leave to file out of time was accepted by the Court on 10 November and on 11 November, she provided the Commissioner with a copy of the notice of appeal (but not the letter). A full set of documents was not served on the Commissioner until 25 November 2021 with Ms Hoeberechts saying that COVID-19 restrictions had caused the delay in her filing and serving the documents.

Issues

The issues that the Court were required to determine were whether it should grant Ms Hoeberechts’ applications for:

- an extension of time to file her appeal;
- dispensing with the requirement to pay security of costs; and
- an *amicus curiae* to be appointed.

Decision

The Court was satisfied that the delay was attributable in part to difficulties experienced as a result of restrictions that were then in place to control COVID-19. Therefore, the only basis on which the Court could refuse Ms Hoeberechts’ extension would be that the proposed appeal is clearly hopeless; that on the facts to which there is no challenge the appeal cannot possibly succeed. This was the basis on which the Commissioner opposed leave and was the principal issue on the application.

Ms Hoeberechts wished to advance two grounds for appealing the Authority’s dismissal:

- Firstly, that the Authority erred in concluding that the Commissioner correctly taxed the \$150,000 backdated weekly compensation payment on a cash basis for the tax year ended 31 March 2018 — the tax year in which Ms Hoeberechts received the payment. The Court referred to this as the *tax treatment ground*.
- Secondly, that even if the Authority were correct in its view of the Commissioner’s tax treatment of the backdated payment, the Authority erred in holding that the Commissioner had no discretionary power to alter the usual application of tax laws. The Court referred to this as *the discretionary ground*.

Tax treatment ground

The Court upheld the Authority’s determination that Ms Hoeberechts was correctly taxed in the year she received the ACC Weekly Compensation Payment.

The Court referred to s BD 3 (2) of the ITA 2007, which sets out the general rule for allocating income to a particular income year and held that there was no suggestion that any provision of Parts C or E to I of the ITA 2007 provides for allocation on another basis.

It also referred to *Hollis v Commissioner of Inland Revenue*, which the Authority relied on, as case law that continues to apply. The Court concluded that on Ms Hoeberechts’ proposed appeal, the Court (and any appellate court) would be bound to apply the principle that taxpayers who are not in trade are appropriately taxed on a cash basis. On the unchallenged facts, the Court held that Ms Hoeberechts cannot possibly succeed on the first ground of her proposed appeal.

The discretionary ground

The Court ratified the Authority’s decision that the Commissioner has no discretionary power to alter the usual application of tax laws. Liability under income tax legislation is imposed by statute, not by the Commissioner.

Ms Hoeberechts had argued that the Commissioner has a discretionary power to alter the usual application of tax law and that it should be exercised to ensure that ACC claimants receiving backdated payments are taxed at a rate that provides a more accurate accounting of their income from the date of their incapacitating injuries.

The Court rejected this argument and reaffirmed that the Commissioner has no discretion to exercise when assessing the amount of a taxpayer’s liability – and it is the assessment of Ms Hoeberechts’ tax liability that would be at issue in the proposed appeal.

Thus, the Court concluded that Ms Hoeberechts cannot possibly succeed on the second ground of the proposed appeal.

Conclusion

The Court declined to extend time for Ms Hoeberechts' to file her appeal which meant it was unnecessary to address the two subsidiary questions as to security for costs and the appointment of an *amicus curiae*.

Although sympathetic to the position in which Ms Hoeberechts has been placed by ACC's late payment of her entitlements in that she has been exposed to a higher rate of tax than she would have incurred had ACC paid her entitlements on time, Justice Campbell said he had no doubt that that treatment is in accordance with the ITA 2007 and that "any change in that treatment is a matter for Parliament. Neither the Commissioner, the Authority nor this Court has power to effect any such change".

About this document

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