

CASE SUMMARY

Taxation Review Authority reconfirms that backdated ACC weekly compensation is taxed in the year of receipt; s 9 of the NZBORA does not support the Disputant's position

Decision date: 23 August 2022

CSUM 22/03

CASE

Disputant v Commissioner of Inland Revenue [2022] NZTRA 2

LEGISLATIVE REFERENCES

Income Tax Act 2007, s BD 3;

Accident Compensation Act 2001, s 252;

New Zealand Bill of Rights Act , ss 6 and 9.

LEGAL TERMS

Backdated ACC weekly compensation; income; derive; cash basis; NZBORA.

FORUM

Taxation Review Authority

Summary

The Disputant challenged her income tax assessment for the year ended 31 March 2017 (“the Period in Dispute”). The Accident Compensation Corporation (“ACC”) made a gross payment of \$363,808.36 (“the ACC Weekly Compensation Payment”) to the Disputant in the Period in Dispute. The Commissioner of Inland Revenue (“the Commissioner”) taxed the entire ACC Weekly Compensation Payment in the Period in Dispute, when the Disputant received it.

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 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. Finally, the decision asserts that s 9 of the New Zealand Bill of Rights Act 1990 (NZBORA) does not support the Disputant’s position.

Facts

From the income tax year ended 31 March 1995 to June 2015 the Disputant received ACC payments relating to an injury. In that period there were times when she was not paid any ACC weekly support.

On 20 September 2016, ACC issued a letter to the Disputant saying that:

- it had reviewed her entitlement for the period from 26 July 2000 to 7 August 2016; and
- she was entitled to a net payment of \$340,508.78.

After adjustments, the Disputant received a payment of \$363,808.36 in the tax year ending 31 March 2017; of that \$328,032.71 related to the compensation that should have been paid in the tax years ending 2001 to 2016.

In the period from 31 March 1999 onwards, the Disputant was not self-employed or trading on her own account.

Issues

As there was no factual dispute to resolve, the Taxation Review Authority (“the Authority”) was required to determine:

- What is the correct tax treatment of the lumpsum payment; and

- Does section 9 of the NZBORA affect the application or interpretation of the legislation?

Decision

Tax treatment of the lumpsum payment

The Authority determined that the Disputant was correctly taxed in the year she received the payment in arrears.

The Disputant's main argument was that the correct tax treatment is to tax the ACC Weekly Payment in the years they accrued. In addition, she argued that taxing the income in the year of receipt is "degrading" or "disproportionately severe treatment" under s 9 of the NZBORA.

The Commissioner, on the other hand, argued that the law unequivocally required the lumpsum be taxed as income in the year of receipt and accordingly have the tax rate applicable to that year applied.

The Authority noted that if the income was derived in the years to which the back payments relate, she would have derived it at that time. If the Disputant were correct, 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 only reasonable time to tax the compensation is at the time of payment or later.

The Authority rejected all 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 current ITA 2007, along with consistent payment provisions in the Accident Compensation Act 2001.

Section 9 of the NZBORA

The NZBORA does not support the Disputant's position.

The Authority recognised that every statutory decision-maker is bound by the NZBORA. However, there are long standing principles for the allocation of income, with inevitable benefits and detriments to the different taxpayers.

The Authority reiterated the important principle that cash-basis taxpayers are not taxed on income they have not received.

The Disputant's situation does not reach the high threshold of being "degrading" or "disproportionately severe treatment" in terms of s 9 of the NZBORA. These circumstances do not allow statutory decision-makers to ignore the clear effect of a legislative provision.

About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation Review Authority, the District Court, the High Court, the Court of Appeal or the Supreme Court in matters involving the Revenue Acts. For Taxation Review Authority matters, names have been anonymized. The findings of the court described in a case summary will no longer represent current law where the matter has been successfully appealed or subsequent amended legislation has been enacted.