Inland Revenue
Te Tari Taake

QUESTION WE'VE BEEN ASKED QB 17/05

INCOME TAX – WHETHER YOUTUBE RECEIPTS ARE TAXABLE

All legislative references are to the Income Tax Act 2007 (the Act) unless otherwise stated.

This Question We've Been Asked (QWBA) is about ss CA 1(2), CB 1 and CB 3.

This QWBA considers the income tax treatment of YouTube receipts. It does not consider the GST treatment of YouTube receipts. It also does not consider source or residence issues related to YouTube receipts. It is assumed that the recipient is a New Zealand resident for income tax purposes.

Question

1. Do I need to pay tax on YouTube receipts?

Answer

2. Yes, in many cases, YouTube receipts will be taxable. This may be because the receipts are from a business. However, you do not need to be carrying on a business to be taxable on YouTube receipts. Two other provisions in the Act tax YouTube receipts if they are

   - income under ordinary concepts, or
   - from a profit-making undertaking or scheme.

Explanation

Background

3. YouTube receipts (or receipts from similar online sources, such as Vimeo or Twitch) are no different from any other type of receipt. There are no separate provisions within the income tax laws that deal specifically with receipts from online or web-based activities. Where relevant, current tax laws and interpretations apply.

4. New Zealand tax residents are taxable on their worldwide income. Despite the online origin of YouTube receipts, a resident will be taxable if those receipts are "assessable income" as defined in the Act.

5. There are various types of YouTube receipts, including:

   - Advertising revenue (AdSense income from Google).
   - Affiliate income (earning a commission by promoting other people's or companies' merchandise on your YouTube channel via external annotation links).
   - Paid content (fee received for purchase/rent of a video or subscription to a YouTube channel).
   - Sponsorship (fee earned from product placements or endorsements).

6. YouTube receipts are often passively earned, in that once the video has been created and monetised, the creator can earn revenue without doing anything more. There may be a perception that passive YouTube receipts are more akin to income from a hobby or pastime (ie, not a business) and are therefore not

taxable. However, a business is not necessary for YouTube receipts to be taxable. For instance, YouTube receipts may also be taxable as income under ordinary concepts or as income from a profit-making undertaking or scheme.

The relevant law

7. The Act does not define "income" exhaustively, although a number of types of income receipts are included within Part C.

8. Under s CB 1, amounts derived from a business are income for tax purposes. Inland Revenue has released guidance on whether a taxpayer is carrying on a business (eg, *Tax Information Bulletin* Vol 7, No 3 (September 1995): 8; IR1022 – Online Trading Tax Implications (October 2013); IR320 - Smart Business: A guide for businesses and non-profit organisations (March 2016)). These are available on the Inland Revenue website: www.ird.govt.nz.

9. Under s CB 3, an amount a person derives from carrying on or carrying out a profit-making undertaking or scheme is their income. Essentially, an undertaking or scheme is a programme of action, a series of steps, or an enterprise directed to an end result. The words "undertaking or scheme" suggest activities that are co-ordinated by plan or purpose. The plan or purpose must be coherent and have some unity of conception (see *Investment & Merchant Finance v FCT* (1970) 120 CLR 177 (HCA)), but does not need to be precise - a fairly generalised plan is all that is needed (see *Case S86* (1996) 17 NZTC 7,538). Also, any purpose of making a profit must be the dominant purpose (see *CIR v Walker* [1963] NZLR 339 (CA)).

10. Under s CA 1, an amount is also income of a person if it is their income under ordinary concepts. The phrase "income under ordinary concepts" is not defined in the Act and its meaning has developed under the common law.

11. In *Reid v CIR* (1985) 7 NZTC 5,176 (CA), Richardson J described the concept of income as comprising three features:

- Income is something that comes in.
- Income imports the notions of periodicity, recurrence and regularity.
- Whether a particular receipt is income depends upon its quality in the hands of the recipient.

12. Some other key principles from cases that considered income under ordinary concepts include:

- The periodic nature of payments made is the major determinant in many cases. Regularity or recurrence indicates that payments may become part of the receipts upon which the recipient may depend for their living expenses (*Reid, A Taxpayer v CIR* (1997) 18 NZTC 13,350 (CA), *FCT v Hyteco Hiring Pty Limited* 92 ATC 4,694 (FFC)).
- Consideration must be given to the relationship between payer and payee (*Reid*).
- The purpose of any payments made must be taken into account (such as in *Reid*, where the payments were contractual and received in return for performing certain student obligations).

13. Windfall gains are excluded from being income under ordinary concepts. A windfall gain would include gifts and gratuitous receipts (eg, an inheritance or bequest), as well as winnings from games of chance (eg, lottery winnings). The key point is the random nature of these types of receipts, which precludes them from being classified as income under ordinary concepts.

14. You should be aware that even if you are not conducting a business of earning income from YouTube videos, your receipts may still be taxable as income from a profit-making undertaking or scheme, or as income under ordinary concepts. Each case needs to be considered on its own facts.

15. The costs related to gaining or producing your YouTube income may be deductible for tax purposes. This is subject to:

- *The capital limitation*: expenditure of a capital nature is not deductible. The cost of capital items may, however, be depreciated.
- *The private limitation*: expenditure for any private benefit is not deductible. Your expenditure may need to be apportioned if it is partly for private purposes (with the private portion not being deductible).

16. Some examples have been included below.

Example 1 – non-taxable hobby income

17. Damian is employed full time as a marketing manager. He is also a keen wildlife photographer. His busy job does not allow him much time to pursue his interest in photography. However, once a year, Damian takes a safari holiday in Africa and spends an enjoyable three weeks viewing and photographing wildlife. When he gets back from holiday, he likes to upload his favourite photographs and set them to music on his YouTube channel. To recover some of the costs of the holiday and his expensive photography equipment, Damian sells the photographs via his YouTube channel. He includes his email contact details and viewers who want to purchase the images can contact him for high resolution copies.

18. Damian's intention is not to make a profit and his YouTube activities are not business-like. His photography is a recreational pursuit, which he does in his spare time for personal enjoyment. On the specific facts set out, Damian is, therefore, not conducting an online photography business via YouTube. The income he receives from selling his photographs is not taxable business income. The sporadic nature of receipts and lack of profit-making intention also mean the income is not taxable under ordinary concepts or as a profit-making scheme.

Example 2 – income taxable under ordinary concepts

19. Hayden is a solicitor employed full time. He is also an online game enthusiast. He plays the interactive game "CourtCraft" in his spare time. Hayden also likes to makes videos of himself playing CourtCraft, which he posts on his YouTube Channel.

20. Over time, Hayden's online activities result in a substantial following by other online game enthusiasts. Hayden is approached by the developers of CourtCraft and an arrangement is reached under which Hayden monetises his videos and posts a link in them to the developer's online store (a YouTube approved external retail site). Every time someone clicks on the link, they are directed to the store. If this results in the sale of any of the developer's online products, Hayden receives a commission.

21. Hayden's videos are such a success that he ends up earning a few thousand dollars of commission income each month. Hayden retains his day job and continues to play CourtCraft in his spare time. Is he taxable on the commission income?

22. Hayden is employed full time and only plays CourtCraft in his spare time. He consequently devotes little time, money and effort to earning the commission income. Hayden's intention is also not to make a profit from his gaming

activities; he simply enjoys playing CourtCraft and the attention he derives from the interest in his videos. Based on these facts, Hayden may not be carrying on a business of earning commission. However, the commission he receives is clearly income within the ordinary concepts definition. It is a regular monthly amount coming in to Hayden, in recognition of a service he provides to CourtCraft's developers. Hayden will therefore be taxable on the commission income.

Example 3 – income taxable from a profit-making scheme

23. Sarah owns an especially cute hamster. She builds a miniature playground, complete with tiny slide and swing, for the hamster and posts a video of it playing on YouTube. She shares the video with her friends on social media. The video is an instant online success and goes viral, quickly amassing millions of views worldwide. Despite the millions of views, Sarah has not made any money from the video. Her friends encourage her to monetise the video and try to make a bit of money.

24. Sarah decides to profit from her cute hamster. She creates a Google AdSense account and monetises the video. Ad clicks by viewers of the video result in Sarah earning a share of advertising revenue. Her hamster video quickly generates $10,000 paid to Sarah in the first month after monetising the video. However, the internet's "cute hamster" phase is short-lived and, after her initial success, viewing of Sarah's video (and resultant AdSense revenue) quickly comes to an end.

25. Although the hamster video going viral appears to be a random event, the money Sarah makes from the video is, on the facts set out, not a windfall gain. This is because Sarah, by choosing to monetise the video and allowing ads to run on the video with the dominant purpose of making a profit, has undertaken a profit-making scheme. The advertising income she receives will be taxable under s CB 3.

Summary

26. If you receive YouTube receipts, they may be assessable income, depending on the circumstances. The assessable income needs to be declared in your tax return.

27. Similarly, if any amount is assessable income, then some of the costs related to gaining or producing that income may be allowable as a deduction (subject to the capital and private limitations).

28. You must retain records sufficient to calculate your income and expenses. Generally, those records should be kept for seven years from the end of the income year to which they relate.

Item provides general guidance only

29. This item provides general guidance only. This item also does not consider any possible goods and services tax consequences of YouTube receipts. Individual circumstances are inevitably different. Inland Revenue suggests that anyone earning significant YouTube receipts may wish to obtain advice from a tax advisor.

References

Related rulings/statements

Tax Information Bulletin Vol 7, No 3 (September 1995): 8
IR1022 – *Online Trading Tax Implications* (October 2013)
IR 320 - *Smart Business: A guide for businesses and non-profit organisations* (March 2016)

Subject references

YouTube receipts
E-commerce
Profit-making undertaking or scheme
Income under ordinary concepts
Record keeping

Legislative references

Income Tax Act 2007, ss CA 1(2), CB 1 and CB 3
Tax Administration Act 1994, s 22

Case references

A Taxpayer v CIR (1997) 18 NZTC 13,350 (CA)
Case S86 (1996) 17 NZTC 7,538
CIR v Walker [1963] NZLR 339 (CA)
FCT v Hyteco Hiring Pty Limited 92 ATC 4,694 (FFC)
Investment & Merchant Finance v FCT (1970) 120 CLR 177 (HCA)
Reid v CIR (1985) 7 NZTC 5,176 (CA)