



This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: deductibility of royalties where withholding tax has not been remitted to the Tax Office.

1. Royalty withholding tax (RWT) must be paid to the Tax Office by the 21st day of each month following the month in which the RWT was withheld in accordance with paragraph 221YN(1)(a) of the *Income Tax Assessment Act 1936* (ITAA). Penalties may apply where a person fails to make a RWT remittance as required or is late in remitting the RWT to the Tax Office.
2. In addition, section 221YRA of the ITAA provides that a person cannot obtain an income tax deduction (under section 51) of the ITAA for a royalty until the RWT is remitted to the Tax Office.
3. A situation may arise where a RWT deduction is not remitted to the Tax Office until after the payer's assessment has been made in accordance with section 166 of the ITAA or, in the case of a relevant entity such as a company, deemed to have been made under section 166A. In such a case the taxpayer would be able to request an amendment in accordance with section 170. Because of the operation of subsection 170(10) the assessment may be amended at any time.

Example:

A company pays, credits or otherwise deals with a royalty to a non-resident on 10 June 1994 but does not remit the RWT to the Tax Office until 1 April 1995.

The company's income tax return for the income year ended 30 June 1994 is required to be lodged no later than 15 March 1995.

The company is not entitled to an income tax deduction for the 1994 year of income until such time as the RWT has been remitted to the Tax Office. Accordingly, an income tax deduction is not allowable when the company furnishes its income tax return on 15 March 1995. The company may, however, request an amendment to its assessment to allow an income tax deduction for the royalty payment on or after 1 April 1995.

In the above example, if the company failed to lodge its 1994 return until 1 April 1995, it would be entitled to an income tax deduction at the time of the deemed assessment; ie. 1 April 1995.

The company would, of course, be liable for late payment penalty for the RWT from 21 July 1994 till 1 April 1995.

Commissioner of Taxation

3/6/93

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Related Determinations:

Related Rulings:

Subject Ref: Royalty Withholding Tax

Legislative Ref: ITAA Pt III Div 11A

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