

TD 92/D195 - Income tax: are Tax Instalment Deductions (T.I.D.'s) required to be made from directors fees where the director is an employee of a related company and it is a condition of his employment that the directors fees be paid to the related company?

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This document has been finalised by TD 93/225.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: are Tax Instalment Deductions(T.I.D.'s) required to be made from directors fees where the director is an employee of a related company and it is a condition of his employment that the directors fees be paid to the related company?

1. No. T.I.D.'s are not required to be made from directors fees, where the director is an employee of a related company and it is a condition of his employment that the directors fees be paid to the related company.
2. Directors fees qualify as salary or wages as defined by section 221A of the Income Tax Assessment Act 1936. An employer is required to deduct T.I.D.'s from payments of salary or wages in line with section 221C.
3. However, the company which is making the payment for directors fees may apply to have the rate of deduction of tax varied in line with section 221D of the ITAA. It would not be appropriate to require deduction of tax instalments from directors fees paid in these circumstances.

Example: Company A is a major shareholder of Company B. Company A appoints an employee, C, as a director to the board of Company B. As a condition of his appointment, C is required to pay any directors fees to Company A. T.I.D.'s would ordinarily be required to be made from directors fees but the rate at which they are to be deducted may be varied to nil in cases with circumstances similar to the above.

Commissioner of Taxation

29/10/92

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Related Rulings: IT 2319; IT 2320

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