


TD 93/D21 - Income tax: : do travel and accommodation expenses incurred by a resident company so as to enable the transfer of knowhow from a non-resident company to the resident Australian company constitute a royalty as defined in subsection 6(1) of the Income Tax Assessment Act 1936?

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Draft Taxation Determination

Income tax: : do travel and accommodation expenses incurred by a resident company so as to enable the transfer of knowhow from a non-resident company to the resident Australian company constitute a royalty as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*?

1. No. Subsection 6(1) defines 'royalty' as including amounts paid in consideration for the supply of scientific, technical, industrial or commercial knowledge or information (paragraph (c) of the definition), and for the supply of ancillary and subsidiary assistance to enable the application or enjoyment of such knowledge or information (paragraph (d)).

2. Where an agreement for the transfer of know-how by a non-resident to an Australian resident includes a promise to reimburse the transferor for travel and accommodation expenses, such reimbursement payments are not royalties. This is because they are not payments made for the supply of know-how nor for the supply of ancillary and subsidiary assistance.

3. In addition, such payments do not fall within the ordinary meaning of 'royalty' as discussed in Taxation Ruling IT 2660 because they are not made in return for the right to exercise a beneficial privilege or right.

Examples:

1. *If a US company (US Co) contracts with an Australian company (Aust Co) to provide knowhow, and in addition to charging Aust Co for the cost of providing the know-how it also charges out the travel and accommodation expenses incurred by its employee in discharging its contractual obligations, the expenses relating to the travel and accommodation do not constitute a royalty.*

2. *Aust Co contracts with US Co to send some of its staff to the USA to acquire know-how. US Co pays the accommodation expenses for Aust Co employees as a matter of administrative convenience and then charges Aust Co for this amount in addition to the cost of providing the know-how. The cost of the accommodation does not constitute a royalty.*

Commissioner of Taxation

04/02/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: IT 2660

Subject Ref: Royalties; know-how payments; travel; accommodation

Legislative Ref: 6(1)

Case Ref:

ATO Ref: A22

