


***TD 94/D62 - Income tax: what is the correct income tax treatment in an individual tax return for an amount paid by a partnership as a salary to an individual partner?***

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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.

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## Draft Taxation Determination

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### Income tax: what is the correct income tax treatment in an individual tax return for an amount paid by a partnership as a salary to an individual partner?

1. A partnership is not a legal entity with a separate identity distinct from its partners; rather, it is a contractual arrangement between parties. Accordingly, a partnership is not capable of employing a partner as an employee of the partnership. The *Income Tax Assessment Act 1936* (the Act) does not make specific provision for payment of salaries to partners.

2. If a partner is entitled to a 'salary' under the terms of the partnership agreement, that 'salary' is, in fact, an allocation of partnership profit prior to the general division among the partners. Income Tax Ruling IT 2218, para 4, states the Commissioner's view that a salary paid to a partner does not represent **salary or wages** for the purposes of the tax instalment deduction provisions in Division 2 of Part VI of the Act.

3. Section 161 requires persons to furnish a return to the Commissioner in the prescribed manner. Income Tax Regulation 21(2) requires that the return shall state income derived respectively from the partnership and from other sources.

4. Partners who receive a 'salary' as part of their partnership distribution are required to state this income as a partnership distribution in their individual returns. They should **not** state the amount as **salary or wage** income. If voluntary tax instalment deductions are made, then they **alone** may be entered in the salary and wage section of the return. The corresponding salary or wage should be shown as zero.

**Commissioner of Taxation**  
26/5/94

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: IT2218

Subject Ref: partnerships; partner's portion; salary amount; tax instalment deductions

Legislative Ref: ITAA 161; ITAA Pt VI Div 2; ITR 21(2)

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