


TD 96/D3 - Income tax: can an amount deducted under the Prescribed Payment System (PPS) from a payment to a company be entered into the franking account of the company at the time the deduction is made?

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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.

Draft Taxation Determination

Income tax: can an amount deducted under the Prescribed Payment System (PPS) from a payment to a company be entered into the franking account of the company at the time the deduction is made?

1. No. An instalment or deduction of tax can only give rise to a credit in the franking account of a company at the time the tax is 'paid' by that company. The remittance of an amount deducted from a payment to a company under the PPS provisions, does not constitute a 'payment' of tax by the company at that time, because the company cannot discharge a tax liability until an assessment is made by the Commissioner for the relevant period.
2. Under the franking of dividends provisions of the *Income Tax Assessment Act 1936* (the Act) an instalment or deduction of tax only gives rise to a credit in the franking account at the time the tax is 'paid'. For example, section 160APM provides that a franking credit arises on the day on which a 'company tax instalment' liability is paid, and section 160APMB that a franking credit arises on the date on which any further payment on account of company tax is made.
3. 'Paid' is defined in section 160APA (in relation to an amount payable to the Commissioner under the Act) to include 'discharged by the application of a credit or other amount by the Commissioner'. In order for an amount deducted under the PPS to result in tax being 'paid' that deduction must satisfy either the ordinary meaning of 'paid', or meet the extended definition in section 160APA.
4. The ordinary meaning of 'paid', in the context of a tax debt, refers to the transfer of money to meet the tax debt. The definition of 'pay' in *The New Shorter Oxford English Dictionary* states, in part, 'Give (a person) money etc. that is due for goods received, a service done, or a debt incurred; ... hand over or transfer money in discharge of a debt'. In *Paton v. Inland Revenue Commissioners* [1938] AC 341, Lord Macmillan held 'paid' to mean 'actually discharged'.
5. Given this ordinary meaning of 'paid', we consider that the definition in section 160APA was intended to extend the meaning of 'paid' beyond actual transfers of money for the purpose of the discharge of an existing tax debt, to include the application of amounts previously received by the Commissioner to discharge a tax debt.
6. Under the PPS, a third party required to deduct an amount from a payment to another entity under a contract must remit that amount to the Commissioner. The amount sent to the Commissioner is held in a separate account until it is credited against the tax assessed for the particular year. Subsection 221YHF(1) provides that a person (including a company) is entitled to a credit equal to the amount of the PPS deductions made in a year of income, at the point in time

when an assessment has been made of tax payable, or the Commissioner is satisfied that no tax is payable in relation to a year of income.

7. In essence, the PPS is similar to the Paye As You Earn (PAYE) System, in that it progressively collects amounts which are later offset against an assessed tax liability. The deduction of an amount by a third party under the PPS provisions does not satisfy the ordinary meaning of 'paid'. While there has been a transfer of money, that transfer does not, at the time of the deduction, result in the discharge of a tax debt by the company.

8. It is the subsequent application of the PPS credit arising under section 221YHF, by the Commissioner, which results in the discharge of the tax debt. It is only when the Commissioner has applied an amount of a credit in payment of an amount of tax payable, that the amount applied will be deemed to have been paid at a time at which it was applied, or at such earlier time as the Commissioner determines: subsection 221YHG(5).

Commissioner of Taxation

17 April 1996

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Related Determinations:

Related Rulings:

Subject Ref: franking credits; Prescribed Payment System

Legislative Ref: ITAA 160APA; ITAA 160APM; ITAA 160APMB; ITAA 221YHF; ITAA 221YHF(1);
ITAA 221YHG(5)

Case Ref: Paton v. Inland Revenue Commissioners [1938] AC 341

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