IT 2128 - Deductions of P.A.Y.E. tax instalments : director's fees

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TAXATION RULING NO. IT 2128

DEDUCTIONS OF P.A.Y.E. TAX INSTALMENTS : DIRECTOR'S FEES

F.O.I. EMBARGO: May be released

REF H.O. REF: 84/4868-0 DATE OF EFFECT: Immediate
J 237/4/3

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1122217	SALARY OR WAGES:	221A(1)(b)
	DIRECTOR'S FEES:	221C(1A)
	TAX INSTALMENT DEDUCTIONS:	221EAA

PREAMBLE It has recently been brought to attention that some companies are failing to deduct tax instalments from all or part of the remuneration paid to directors.

2. The purpose of this ruling is to highlight the illegality of, and the penalties attracted by, breaches of the taxation provisions requiring deductions of P.A.Y.E. tax instalments from salary or wages paid to employees.

RULING 3. Sub-section 221C(1A) of the Income Tax Assessment Act 1936 requires an employer to make tax instalment deductions at prescribed rates from salary or wages paid to an employee. The term "salary or wages" is defined in section 221A of the Act and includes, among other things, ".... any payments made .... by a company by way of remuneration to a director of that company".

4. The requirement under sub-section 221C(1A) to deduct a tax instalment from payments by way of remuneration to a director of the company is mandatory. Failure to deduct, or under-deduction of, tax instalments is viewed as a serious breach of the income tax law.

5. Section 126 of the Taxation Laws Amendment Act 1984 (Act No. 123 of 1984), which received Royal Assent on 19 October 1984 and which came into full operation on 14 December 1984, inserted section 221EAA into the Income Tax Assessment Act 1936. Where a company refuses or fails to deduct a tax instalment from fees paid to directors it will be liable by way of statutorily imposed penalty to pay an amount equal to the undeducted instalment plus interest at the rate of 20 percent per annum. The interest component is calculated from the time when, had the instalment been deducted, the company would have been required to pay the amount to the Commissioner or otherwise affix tax stamps of equal value as required by Division 2 of Part VI of the Act.

6. The amending legislation also provides that an employer who fails to deduct a tax instalment from a payment of salary or

wages (including director's fees) may be liable to prosecution and, if convicted, to a court imposed fine of up to $1,000. The court may also order the convicted person to pay to the Commissioner an amount not exceeding the amount of the deduction. In addition, persons concerned in, or who take part in, the management of a company may be liable to prosecution as if they had committed the offence themselves.

COMMISSIONER OF TAXATION
18 December 1984