IT 2283 - Income tax : assessability of film and video print costs paid to non-residents

TAXATION RULING NO. IT 2283

INCOME TAX : ASSESSABILITY OF FILM AND VIDEO PRINT COSTS PAID TO NON-RESIDENTS

F.O.I. EMBARGO: May be released

REF H.O. REF: 83/9828-3 DATE OF EFFECT: Immediate

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

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1077946	ROYALTIES	6(1)
	FILM AND VIDEO TAPE	6C
	PRINT COSTS	136A

PREAMBLE "Royalty" or "royalties" is defined in sub-section 6(1) of the Income Tax Assessment Act 1936 to include, among other things, payments as consideration for the use of or the right to use motion picture films and films or video tapes for use in connection with television. Where payments for these purposes are made by residents of Australia to non-residents, the payments are deemed by section 6C to have a source in Australia.

2. An enquiry recently dealt with in this office concerned the liability to income tax of certain payments made by a resident company to a non-resident under film distribution licensing agreements.

FACTS 3. The resident company was engaged in a business of film distribution and exhibition which included obtaining under licence from non-residents rights to distribute and exhibit in Australia films, video tapes and television rights to films.

4. In some of the licence agreements the non-resident producer/licensor charged an overall inclusive fee. The fee covered such things as costs of printing copies of the film, trailers, advertising material as well as consideration for the use of, or the right to use, the film etc. It was agreed that, for the purposes of the Assessment Act, the overall inclusive fee was a royalty as defined, being a royalty to which, subject to provisions in international agreements, section 6C and Division 13A of Part III applied.

5. In other agreements examined, however, the non-resident licensor was to be paid a relatively small fee for the use of, or the right to use, a film. The agreements provided that additional payments for printing were to be made by the licensee directly to a non-resident film laboratory making the prints. The agreements were signed by both the licensor and the licensee in each case and were "agreed to" by the laboratory. The documents evidenced that the material held by the laboratory was at all times held "in the name of the

licensor" and subject to the licensor's instruction. Subject to that condition, and to the arrangements between the licensor and licensee, the laboratory was authorised, directed and instructed to fill the licensee's orders for prints.

6. It was not disputed that the fee for the right to use the film was a royalty. It was contended, however, that the print costs were for services rendered and, therefore, not royalties. The agreements being signed outside Australia and the prints made outside Australia it was further contended that payments to the laboratory for the prints were not liable to Australian income tax.

RULING

7. The contentions advanced were not accepted. The payments made directly to the laboratory do not leave the licensee in a position materially different from that where costs of printing films and trailers are included in the overall fees payable to licensors. The licensee obtains no proprietary interest in the prints which are to be returned or destroyed at the conclusion of the agreements. Under both forms of agreement the licensee obtains only the use of, or the right to use, the films and trailers. The various documents requiring printing payments from the licensee to the laboratory are all part of the one contract ensuring the effective preservation of all the licensor's rights.

8. For these reasons it was considered that the payments by the licensee to the laboratory were part of the overall consideration payable for the use of, or the right to use, the films in question. Accordingly, subject to provisions in international agreements, the payments are to be treated as royalties to which section 6C and Division 13A apply.

COMMISSIONER OF TAXATION
11 April 1986

<