


IT 2534 - Income tax: taxation treatment of directors fees, bonuses, etc.

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TAXATION RULING NO. IT 2534

INCOME TAX: TAXATION TREATMENT OF DIRECTORS FEES, BONUSES, ETC.

F.O.I. EMBARGO: May be released

REF N.O. REF: 84/4868-0 DATE OF EFFECT: 1 July 1989
88/2208-5

F.O.I. INDEX DETAIL

REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

I 1011255	DIRECTORS FEES, BONUSES AND SIMILAR PAYMENTS	
	WHEN INCOME DERIVED	25(1)
	WHEN EXPENDITURE INCURRED	51(1)
	TAX INSTALMENT DEDUCTIONS	221C(1A)

PREAMBLE Consideration has been given to the efficacy for taxation purposes of a practice that has developed over time whereby directors fees, bonuses and other such payments are treated for taxation purposes as if paid or otherwise made available to the director or employee during a year of income, notwithstanding, that those items are not determined and authorised to be paid or credited until some months into the following year of income. This practice first arose in the case of professional practice companies as a strategy for meeting the requirement that such companies have no retained profits. In recent times the practice has come to be adopted by companies in general.

RULING 2. The point in time when a company becomes entitled to an income tax deduction for directors fees, bonuses and other such payments will depend on the facts of each particular case. The Taxation Board of Review in Case P69, (1964) 14 T.B.R.D. said, at page 317:

"This question cannot be determined in the abstract, it must be decided on the facts of each case, and in particular reference must be made to the memorandum and articles of association of the company and to the actual resolutions passed.

"In the absence of special agreement, directors of a company have no right to be paid for their services and cannot pay themselves out of the company's funds unless authorized to do so by the instrument which regulates the company or by the shareholders at a properly convened meeting."

3. The decision in that case (and in previous cases H21 (1957) 8 T.B.R.D. and H29 (1957) 8 T.B.R.D.) shows that to qualify for a deduction a company must, before the end of the year of income, become definitively committed to the payment of a quantified amount of directors fees, bonuses or other such payments, (e.g., by passing a properly authorised resolution). It follows that the practice of bringing to account amounts actually determined

and authorised to be paid after the close of the year of income as if those amounts had been determined and authorised during the year of income is not acceptable for income tax purposes.

4. So far as the point in time when income such as directors fees, bonuses, etc., are considered to have been derived for income tax purposes, the law is settled that salary or wages and other similar types of income are derived for income tax purposes at the time the income is paid or otherwise made available to the employee. This is so notwithstanding that the services giving rise to the income may have been rendered or performed in a previous year of income. Accordingly, the practice of including these items in the assessable income of the director for the year preceding that in which the income is actually paid or otherwise made available is not acceptable for income tax purposes.

5. It is recognised that some companies may have made payments of directors fees, bonuses etc., since 1 July 1988 and brought those amounts to account in the books for the year ended 30 June 1988 or relevant substituted accounting period. Similarly, some directors may have brought to account in their assessable income for the year ended 30 June 1988 amounts actually paid or credited after that date on the understanding that this practice was acceptable. To ensure that all taxpayers are treated equally, this Ruling will apply from 1 July 1989. The practical effect of this in relation to normal balancing companies is that deductibility/assessability will only arise in the 1988-89 income year where the relevant payments are made on or before 30 June 1989.

6. As mentioned in Taxation Ruling IT 2128, the PAYE provisions of the income tax law place an obligation on an employer to deduct tax instalments at the time salary or wages are paid to an employee. This obligation extends to directors fees, bonuses and other emoluments and is considered to arise at the time those amounts are paid or otherwise made available to the director. It is confirmed that all of these payments are subject to tax instalment deductions at the prescribed rates when paid or otherwise made available unless specific approval to vary the prescribed rates of deduction has been granted. They will, of course, be subject to tax instalment deductions at the maximum marginal rate plus medicare levy where a tax file number is not quoted.

COMMISSIONER OF TAXATION
25 May 1989