


# ***TD 93/D82 - Income tax: deductibility of royalties where withholding tax has not been remitted to the Tax Office***

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This document has been finalised by TD 93/99.

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: deductibility of royalties where withholding tax has not been remitted to the Tax Office.**

1. A royalty deduction must be paid to the Tax Office by the 21st day of each month following the month in which the deduction was made in accordance with paragraph 221YN(1)(a) of the *Income Tax Assessment Act 1936* (ITAA). Penalties may apply where a person fails to make a deduction as required or is late in remitting a deduction to the Tax Office.
2. In addition, subsection 221YRA(1A) of the ITAA provides that a person cannot obtain an income tax deduction for a royalty until the deduction is remitted to the Tax Office.
3. A situation may arise where a royalty payment is not remitted to the Tax Office until after an assessment has been made in accordance with section 166 of the ITAA or, in the case of a relevant entity such as a company, deemed to have been made under section 166A. In such a case the taxpayer would be able to request an amendment in accordance with section 170.

#### **Example**

*A company pays, credits or otherwise deals with a royalty to a non-resident on 10 June 1994 but does not remit the deduction to the Tax Office until 1 April 1995.*

*The company's income tax return for the income year ended 30 June 1994 is required to be lodged no later than 15 March 1995.*

*The company is not entitled to an income tax deduction until such time as the royalty deduction is remitted to the Tax Office. Accordingly, an income tax deduction is not allowable when the company furnishes its income tax return on 15 March 1995. The company may, however, request an amendment to its assessment to allow a deduction for the royalty payment on or after 1 April 1995.*

*In the above example, if the company failed to lodge its return until 1 April 1995, it would be entitled to an income tax deduction at the time of the deemed assessment; ie. 1 April 1995.*

*The company would, of course, be liable for late payment penalty from 21 July 1994 till 1 April 1995.*

#### **Commissioner of Taxation**

1/4/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: royalty withholding tax

Legislative Ref: ITAA Pt III Div 11A

Case Ref:

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