TD 94/D69 - Income tax: are(i) late lodgment fees scheduled in the Corporations (Fees) Regulations; and (ii) penalties for offences contained in the Corporations Regulations, considered to be 'penalties' within the meaning of subsection 51(4) of the Income Tax Assessment Act 1936 ?

This cover sheet is provided for information only. It does not form part of *TD 94/D69 - Income tax: are(i) late lodgment fees scheduled in the Corporations (Fees) Regulations; and (ii) penalties for offences contained in the Corporations Regulations, considered to be 'penalties' within the meaning of subsection 51(4) of the Income Tax Assessment Act 1936 ?*

This document has been finalised by TD 94/84.

Australian Taxation Office

Taxation Determination TD 94/D69

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: are

(i) late lodgment fees scheduled in the Corporations (Fees) Regulations; and

(ii) penalties for offences contained in the Corporations Regulations,

considered to be 'penalties' within the meaning of subsection 51(4) of the *Income Tax Assessment Act 1936*?

1. Yes. Firstly, fees for lodgment of documents, including late lodgment thereof, are prescribed under Regulation 3 of the Corporations (Fees) Regulations. A late lodgment fee applies where a corporation lodges a document outside the prescribed period. It becomes due and payable in every instance where a document is lodged late. The late lodgment fee is a disincentive to corporations to lodge documents outside the prescribed period.

2. Subsection 51(4) denies a deduction under subsection 51(1) for amounts, however described, by way of penalty under Commonwealth, State, Territory or foreign country laws, or for amounts ordered by a court upon conviction for breach of such laws.

3. The late lodgment fee is an amount imposed by Item 62 of Regulation 3 on a corporation for failure to comply with the statutory timeframe for lodgment of a document. The late lodgment fee is '... an amount ... by way of penalty' within the meaning of subsection 51(4) and is not deductible under subsection 51(1).

4. Secondly, penalties for prescribed offences are imposed under Schedule 12 of the Corporations Regulations. These are clearly 'penalties' in terms of subsection 51(4) of the Act.

Example:

A company holds its annual general meeting on 30 September and is required to lodge its annual return by 31 October. The annual return is lodged on 15 March of the following year. A fee of $233 is paid on lodgment of the return comprising a basic lodgment fee of $152 and late lodgment fee of $81. A penalty notice is issued by the Australian Securities Commission on 1 March for an amount of $125. The $81 late lodgment fee and the $125 penalty will not be deductible under subsection 51(1) by virtue of subsection 51(4).

Commissioner of Taxation
23/6/94

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