

TD 96/D2 - Income tax: does the interest payable on late levies represent assessable income of a body corporate?



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This document has been finalised by TD 96/22.

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Draft Taxation Determination

Income tax: does the interest payable on late levies represent assessable income of a body corporate?

1. No. The interest paid by a proprietor to a body corporate because of the late payment of levies is not assessable income of that body corporate. This results from the application of the principle of mutuality.
2. The principle of mutuality requires that contributors to a common fund are entitled to a share in any surplus and any recipients of a surplus must have been contributors to the common fund, i.e., there must be 'complete identity between the contributors and the participators': *Municipal Mutual Insurance Ltd v. Hills* (1930) 16 TC 430 at 448.
3. A distribution of any surplus need not be based on respective contributions, as long as the contributors, as a class, are entitled to the surplus: *Jones v. South-West Lancashire Coal Owners' Association Ltd* (1927) 1 KB 33, affirmed (1927) 11 TC 790; *The Social Credit Savings & Loans Society Ltd v. FCT* 71 ATC 4232; *Sydney Water Board Employees' Credit Union Ltd v. FCT* 73 ATC 4129.
4. Mutuality will apply provided that there is 'a reasonable relationship' between what a member contributes and what he may be expected or entitled to receive from the fund: *Sydney Water Board Employees' Credit Union Ltd v. FCT* 73 ATC 4129 at 4136.
5. In Taxation Ruling IT 2505, paragraphs 9 and 23, the Commissioner considers that contributions not normally made by the proprietors do not become assessable income of the body corporate. Further examples of amounts contributed to the body corporate by the respective proprietors not being considered assessable income, i.e., mutual income, are provided in the same Ruling at paragraph 14.
6. Mutuality extends to a proprietor who pays interest to the body corporate for the late payment of levies. Such a receipt would always remain a contribution by that member for the common benefit of members, e.g., in the payment of lawnmowing expenses. Even if the body corporate was immediately dissolved after the payment, part of it may still be returned to the members as a whole. The interest payment for late levies is considered not to be from business with non-members.

Commissioner of Taxation
27 March 1996

Related Determinations: TD 93/7; TD 93/73

Related Rulings: IT 2505

Subject Ref: interest on late payment of strata title levies

Legislative Ref: ITAA 25(1)

Case Ref: Municipal Mutual Insurance Ltd v. Hills (1930) 16 TC 430; Jones v. South-West Lancashire Coal Owners' Association Ltd (1927) 1 KB 33; The Social Credit Savings & Loans Society Ltd v. FCT 71 ATC 4232; Sydney Water Board Employees' Credit Union Ltd v. FCT 73 ATC 4129

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