IT 2010 - Income tax : variation of tax instalment deductions

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TAXATION RULING NO. IT 2010

INCOME TAX : VARIATION OF TAX INSTALMENT DEDUCTIONS

F.O.I. EMBARGO: May be released

REF H.O. REF: J 237/18/7 Pt3 F74 DATE OF EFFECT: 15.12.82
J 153/63 F64

B.O. REF:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1100472	COLLECTION OF TAX BY INSTALMENTS - VARIATION FROM PRESCRIBED RATES	221D
	TAX INSTALMENT DEDUCTIONS - VARIATIONS FROM PRESCRIBED RATES	

OTHER RULINGS ON TOPIC:

PREAMBLE Attention has recently been drawn to inconsistent treatment of applications for variation of tax instalment deductions. Consequently, a review has been undertaken of section 221D of the Income Tax Assessment Act with a view to implementing a uniform approach.

FACTS 2. Division 2 of Part VI of the Income Tax Assessment Act is concerned with the collection of income tax from the income of employees as such. It is not regarded as being concerned with the outcome or expected outcome of any business or other venture not directly associated with a taxpayer's salary and wage income or employee circumstances. Sub-section 221C(1) clearly envisages that tax instalments should be deducted, at rates prescribed in the regulations, from salary or wages paid to employees.

3. However, the law recognises that the scheduled rates may not always be appropriate. Section 221D empowers the Commissioner to vary the amounts to be deducted for the purposes of meeting the special circumstances of any case or class of cases. Before a variation of tax instalment deductions can be approved, therefore, it is necessary to be satisfied that special circumstances exist.

4. Special circumstances are not defined in the Act, but the legislative history makes it clear that variations under section 221D are intended to be granted only in a limited range of circumstances, hardship being one of them. Special circumstances would not seem to exist unless the circumstances of a particular case are different from those of employees in general.

5. Some further indication of Parliament's attitude regarding

PAYE variations based on estimated income and expenditure may be drawn from those provisions of the law relating to variations of provisional tax and instalments of company tax and, indeed, from the existence of the system of provisional tax. For both variations of provisional tax and instalments of company tax the law specifically envisages estimates but provides penalties for underestimation of income. There is no comparable safeguard in section 221D.

RULING 6. Applications for variation of tax instalment deductions may be approved in the following circumstances:

(a) To meet cases of hardship

(b) hardship is not involved but the standard deduction would exceed expected tax by either 10% of the amount of the deductions or $200 because:

(i) salary or wages are derived on a seasonal or irregular basis, e.g. fruit pickers, shearers, actors;

(ii) a single payment of salary or wages relates to an extended period, e.g. bonuses, commissions;

(iii) an employee is obliged to incur significant expenses in earning income e.g. insurance salesmen, timber fellers;

(iv) a pensioner is entitled to a deduction for the undeducted purchase price of an annuity;

(v) a taxpayer is entitled to concessional rebates not reflected in the tax instalment deduction schedules and which are not claimed by the general run of employees.

7. The rebate for health insurance is not effected in the tax instalment deduction schedules and, being availed of by taxpayers generally, does not constitute special circumstances warranting variation of deductions under section 221D

8. Because they are not employment related, section 221D variations would not be appropriate on account of the likely existence of:

(a) current year or carried forward business losses;

(b) entitlement to deductions for expenses relating to income from property, e.g., interest;

(c) entitlement to rebates or deductions under incentive provisions of the Act, e.g. investment in films.

Note, however, that an application under 8(a) above could be

approved where hardship is involved. It is unlikely that hardship could be demonstrated to support applications under 8(b) or (c).

COMMISSIONER OF TAXATION
13 January 1983