IT 2077 - Tax instalment deductions - freelance writers/authors

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TAXATION RULING NO. IT 2077

TAX INSTALMENT DEDUCTIONS - FREELANCE WRITERS/AUTHORS

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1082669	SALARY OR WAGES, EARNINGS OF FREELANCE WRITERS/AUTHORS	221A(1) 221A(2)(c)

OTHER RULINGS ON TOPIC

IT 2009

PREAMBLE Section 58 of the Income Tax Assessment Amendment Act 1983 (Act No. 14 of 1983), which received Royal Assent on 14 June 1983 amended the definition of "salary or wages" in sub-section 221A(1) of the Income Tax Assessment Act and affected, in various respects, the PAYE provisions of the Assessment Act which deal with the collection of tax by instalments in respect of payments of salary or wages to employees.

2. One of the changes made was the insertion of paragraph 221A(2)(c) which was designed to overcome the decision in the Bolwell Case - Deputy Commissioner of Taxation (COM) v. Bolwell (1967) 1 ATR 862. Sub-paragraph 221A(2)(c)(ii) brought within the scope of payments subject to tax instalment deduction payments for the performance of services in connection with the making of any film, tape or disc or of a television or radio broadcast. The question has been raised as to the application of the PAYE tax instalment deduction provisions, as amended, to payments made to writers/authors involved in the preparation of scripts in connection with such activities.

RULING 3. Tax instalments need not be deducted where a payment made under a contract for the preparation of a script is for the assignment, or the grant of an exclusive licence or right to use, the writer's/author's copyright in the work. Such a payment is not made under a contract that is wholly or principally for the performance of services in connection with an activity of the type outlined in sub-paragraph 221A(2)(c)(ii) and consequently is not "salary or wages" in the terms of paragraph (a) of the definition in sub-section 221A(1).

4. In many cases, however, payments are made to a writer/author either in the capacity of an employee or under a contract that is wholly or principally for the performance of services in relation to the preparation of a script otherwise

than on the basis dealt with in paragraph 3. Such payments are clearly within the terms of the definition of "salary or wages", and tax instalments should be deducted.

COMMISSIONER OF TAXATION
9 April 1984<