IT 2319 - Income tax : director's fees paid by subsidiary company to full time or part time director of the parent company - requirement on director to pay fees to parent company

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TAXATION RULING NO. IT 2319

INCOME TAX : DIRECTOR'S FEES PAID BY SUBSIDIARY COMPANY TO FULL TIME OR PART TIME DIRECTOR OF THE PARENT COMPANY - REQUIREMENT ON DIRECTOR TO PAY FEES TO PARENT COMPANY

F.O.I. EMBARGO: May be released

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DATE OF EFFECT: Immediate

B.O. REF:

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1209497	SALARY OR WAGES	221A(1)(b)
	DIRECTOR'S FEES	221C(1A)
	TAX INSTALMENT DEDUCTIONS	221D

OTHER RULINGS ON TOPIC IT 2128

PREAMBLE Attention has been directed to the requirement on directors of some parent companies to pay over to the parent any director's fees received from subsidiaries within the group. The purpose of this ruling is to outline the position concerning the requirement to make tax instalment deductions from directors' fees in the above circumstances.

RULING 2. Sub-section 221C(1A) of the Income Tax Assessment Act 1936 requires an employer to make tax instalment deductions at precribed rates from salary or wages paid to an employee. The term "salary or wages" is defined in section 221A of the Act and includes, amongst other things, "...any payment made ...by a company by way of remuneration to a director of that company". Section 221D allows the Commissioner to vary the deduction requirement.

3. The director's fees paid by a subsidiary company form part of the assessable income of the director. Where, however, the director is required to pay over all or part of those fees to the parent company as a condition of his employment or appointment, the amounts so paid represent losses or outgoings incurred in gaining or producing the director's assessable income.

4. It is not appropriate to require deduction of tax instalments from directors fees paid in these circumstances. Accordingly it is determined that tax instalment deductions need not be made from directors' fees required to be paid over to the parents.

COMMISSIONER OF TAXATION

19 JUNE 1986

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