IT 2414 - Income tax : variation of tax instalment deductions

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TAXATION RULING NO. IT 2414

INCOME TAX : VARIATION OF TAX INSTALMENT DEDUCTIONS

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1211009	COLLECTION OF TAX BY INSTALMENTS - VARIATION FROM PRESCRIBED RATES	S.221D
	TAX INSTALMENT DEDUCTIONS - VARIATIONS FROM PRESCRIBED RATES.	

OTHER RULINGS ON TOPIC - IT 2010, IT 2014, IT 2299, IT 2300, IT 2319

PREAMBLE This ruling supersedes Taxation Ruling IT 2010 and sets out new guidelines for the exercise of the discretion provided by section 221D of the Income Tax Assessment Act to vary the prescribed rates of tax instalment deductions.

2. The purpose of varying the prescribed rates of deduction is to attempt, as closely as is practicable, to have tax instalments deducted at a rate appropriate to the circumstances of the employee -

(a) so that a large end of year credit for excess tax instalments is avoided; and

(b) to ensure that sufficient instalments are deducted to cover the expected end of year tax liability on the salary or wages income.

3. It must be recognized that it would not be practicable to attempt to vary instalments to match the exact liability on assessment or to grant a variation in every case. Generally, variations will only be granted in those cases in which there is a reasonable likelihood of a significant over-deduction of instalments.

4. The discretion to vary the prescribed rates of instalment deductions may be exercised in any case in which a significant over-deduction of instalments is likely to occur on account of:

(i) salary or wages being derived on a seasonal or irregular basis;

(ii) the employee being obliged to incur significant expenses in earning salary or wages income;

(iii) concessional rebates that are not reflected in the tax instalment deduction schedules;

(iv) an entitlement to an exclusion for the undeducted purchase price of an annuity;

(v) gifts that are allowable deductions;

(vi) losses from prior years that are available to be carried forward; or

(vii) current year allowable deductions, including business or investment expenses.

5. A significant over-deduction of instalments will be considered to occur where instalments deducted at the scheduled rates would be likely to exceed the end of year tax liability by 10% or $500, whichever is the lesser. Where the 10% or $500 test is not met a variation will only be granted where the taxpayer can demonstrate hardship.

Current year allowable deductions

6. Applications for variations which are based on expenditure in respect of which there is some doubt that an allowable deduction will be available will not be approved.

7. It will normally be a condition of approval that the expenditure giving rise to an allowable deduction has been incurred, although this limitation will not necessarily operate to exclude all cases in which expenditure that will give rise to an allowable deduction has not been incurred at the time of making the application. For example, variations may be granted in cases where the taxpayer is, at the commencement of the year of income in which the variation is to apply, engaged in carrying on a business and is obliged to incur expenses that will give rise to allowable deductions. In considering applications on the basis of anticipated outgoings relating to business or investment income regard will be had to, inter alia, the following matters:

(a) whether claims of a similar nature and amount have been made and allowed in previous years; and

(b) whether the expenses claimed would normally be incurred by taxpayers in circumstances similar to those of the applicants.

8. Similar considerations will apply to cases involving other deductions.

9. Where applications are made on the basis of losses from prior years or current year allowable deductions other than gifts, it will be necessary for the applicant to furnish

sufficient information regarding anticipated income from all sources and allowable deductions to be off-set against that income so that the extent to which those allowable deductions will be off-set against salary or wages can be determined with a reasonable degree of accuracy. In determining the extent to which the scheduled rates of deduction are to be varied in these cases the deductions will, in the first instance, be offset against income from sources other than salary or wages.

10. Applications for variations will not be approved in any case in which the applicant has outstanding income tax returns that are overdue for lodgment.

COMMISSIONER OF TAXATION
18 June 1987