


IT 2541 - Income tax : tax instalment deductions from payments made to hotel entertainers

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TAXATION RULING NO. IT 2541

INCOME TAX : TAX INSTALMENT DEDUCTIONS FROM PAYMENTS
MADE TO HOTEL ENTERTAINERS

F.O.I. EMBARGO: May be released

REF

N.O. REF: 4.86/3368-1

DATE OF EFFECT: Immediate

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DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011347	HOTEL ENTERTAINERS	221A(1)
	SALARY OR WAGES	221A(2) (c)
	TAX INSTALMENT	221C(1A)
	DEDUCTIONS	

OTHER RULINGS ON TOPIC IT 2129, IT 2414

PREAMBLE

This Ruling deals with the question whether tax instalments should be deducted from payments made to entertainers engaged through agencies to perform in hotels and similar venues.

2. These entertainers generally have contracts with agencies under which the agency is to find the entertainer work, in return for which the agency receives a commission. The entertainers are paid in one of three ways. Management of the hotel engaging the entertainer may pay the agency, which in turn passes on the entertainer's fee less a commission. Secondly, the hotel may pay the entertainer and the agency their respective fees directly. The third situation is where the hotel pays the entire fee directly to the entertainer who then pays the agency a commission.

3. The requirement to deduct tax instalments depends upon the application of the PAYE provisions of the Income Tax Assessment Act. Under those provisions an "employee" is defined to mean a person who receives, or is entitled to receive salary or wages. "Salary or wages" means, amongst other things, salary, wages, commissions, bonuses or allowances paid to an employee as such and also includes payments made under a contract wholly or principally for the labour of the person to whom the payments are made. The definition of "salary or wages" is extended by paragraph 221A(2) (c) of the Act to include payments made under a contract wholly or principally for the labour of a person for the performing or presentation by a person of, or the participation in, any music, play, dance or entertainment. The person liable to deduct tax instalments is the employer who is defined as the person who pays or is liable to pay salary or wages.

4. This ruling should be read in conjunction with Taxation Ruling No. IT 2129 which sets out guidelines for the identification of payments to which the PAYE provisions apply.

In particular, the following paragraphs of that Ruling should be noted:

- i) Paragraph 15: the scope of the PAYE provisions is limited to "salary or wages" (as defined) derived from the personal exertion of an individual. Income derived by a company, by a person in his or her capacity as a partner in a partnership or a trustee of a trust would not come within the PAYE provisions.
- ii) Paragraph 19: the PAYE provisions apply in respect of salary or wages paid to an "employee as such". The factors to be considered in determining whether the necessary master and servant relationship exists are set out in paragraphs 25 to 32 of IT 2129.
- iii) Paragraph 21: where the payment is made to an individual who is not an employee, and the payment is not a prescribed payment, then the application of paragraph (a) of the definition of "salary or wages" must be considered. Under paragraph (a), the meaning of "salary or wages" is extended to include certain payments made under a contract that is wholly or principally for the labour of the person to whom the payments are made. The application of paragraph (a) is discussed in paragraphs 33 to 49 of IT 2129.
- iv) Paragraph 50: where an individual is carrying on a business and through that business earns income from rendering services to a sector of the public, the payments made to that individual do not constitute payments to which paragraph (a) of the "salary or wages" definition applies.

RULING 5. Subject to what is said in Taxation Ruling No. IT 2129, the entertainers in question will generally be employees in receipt of salary or wages as those terms are defined in the income tax law. They receive payments made under a contract wholly or principally for their labour. Moreover, as they perform or participate in a dance or entertainment they would fall within the extended definition of salary or wages in paragraph 221A(2) (c) of the Act.

6. In most cases the payment of an entertainer's salary or wages is made directly to the entertainer by the hotel. In these circumstances it will ordinarily be the hotel manager/owner who is the employer and who is, therefore, responsible for the deduction of tax instalments. However, the identification of the employer becomes more difficult where a payment is first made to the agency. It then becomes necessary to examine the role of the agency.

7. Where the agency performs only an introductory function on behalf of the entertainer, i.e., where it has merely facilitated a contract of service between the hotel manager/owner and the entertainer, the agent is, on a strict legal interpretation, an agent of the entertainer. In these circumstances, the hotel

manager/owner is the employer and is responsible for the deduction of tax instalments.

8. That situation should be contrasted with the case when as a result of a contract with a hotel manager/owner, the agency is responsible for the provision of entertainment, whether on a permanent or temporary basis. The agency engages entertainers to fulfil its contractual obligations. The distinction to be drawn is that the agency is not acting as agent for the entertainers. The services for which the hotel is contracting are those of the agency itself and not those of any individual entertainer. Therefore the agency will be considered to be the employer for the purposes of the deduction of tax instalments.

9. Where a group of entertainers is engaged, for example a band, it may be accepted that the group is deemed to be a 'partnership' and outside the scope of the PAYE provisions. For income tax purposes a 'partnership' is an association of persons carrying on business as partners or in receipt of income jointly.

10. Where an entertainer receives salary or wages and pays a commission to an agent it may be possible to seek a variation in tax instalment deductions to take into account the agency's commission. Guidelines for the consideration of applications for variation of deductions are set out in Taxation Ruling No. IT 2414.

COMMISSIONER OF TAXATION
29 June 1989