

TD 97/2 - Income tax: should directors' fees be included in the assessable income of a director who is a partner in a professional partnership and who must pass on those fees to the partnership as required by the partnership agreement?

 This cover sheet is provided for information only. It does not form part of *TD 97/2 - Income tax: should directors' fees be included in the assessable income of a director who is a partner in a professional partnership and who must pass on those fees to the partnership as required by the partnership agreement?*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: should directors' fees be included in the assessable income of a director who is a partner in a professional partnership and who must pass on those fees to the partnership as required by the partnership agreement?

1. Generally, no. However, this Taxation Determination, which applies only to partners in professional partnerships such as accounting or legal firms, should be read in conjunction with Taxation Ruling IT 2639.
2. It is common practice for a partner in a professional partnership to be appointed as director of a client company or a public company. The appointment is usually considered to be another service provided by a professional partnership or an extension of the usual business activities of the partnership, and is made because of the partner's connection with the partnership.
3. It is also a common requirement that the partner obtain the approval of the other partners to accept the appointment as director. The partnership agreement usually provides that directors' fees received by partners are to be paid into the partnership account.
4. In accordance with the partnership laws of the States and Territories, a partner who accepts an appointment as a director in the course of carrying on the usual business of the partnership, does so in the capacity as agent for the firm. We consider that a partner in a professional partnership who is appointed as a director in the circumstances outlined in paragraphs 2 and 3 would be appointed as an agent for the partnership. Alternatively, even where the appointment as director is not part of the usual business of the partnership, the relevant partner may be obliged to account to the partnership for directors' fees received from an appointment which became available by virtue of that director's membership of the professional partnership. For example, a partner's appointment as a director may be attributable to the manner in which the partner conducts the usual business of the partnership and the commercial contacts made by the partner in conducting this business. In these circumstances, the opportunity for appointment arises from a partnership business connection and the partner may be required to account to the partnership for the directors' fees received.

5. If the appointment as director is either as agent for the partnership or resulted from the opportunity arising from a partnership business connection, any directors' fees received by the partner are received in the capacity as trustee for the partnership. While the individual partner may have legal entitlement to the directors' fees, the beneficial entitlement rests with the partnership. Consequently, the directors' fees are income of the professional partnership and the partner is not an employee of the paying company for the purposes of the PAYE provisions of the *Income Tax Assessment Act 1936* or the *Superannuation Guarantee (Administration) Act 1992*.

6. In the case where an appointment as a director is unrelated to the partner's membership of the professional partnership, the individual partner is beneficially entitled to any directors' fees, notwithstanding any agreement to pay the directors' fees over to another. Similarly, where the appointment as a director arises from a partnership business connection but the partners agree that the individual partner can retain any directors' fees, the individual partner is beneficially entitled to the fees. In either of these situations, the partner is an employee of the paying company for the purposes of the PAYE and Superannuation Guarantee provisions.

7. Taxation Ruling IT 2320 is withdrawn from the date of issue of this Taxation Determination.

Commissioner of Taxation

22 January 1997

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[Related Determinations:](#)

[Related Rulings:](#) IT 2639

[Subject Ref:](#) directors' fee income; partnership income; trust income

[Legislative Ref:](#) ITAA; SGAA

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