

IT 2098 - Deductions for workers' compensation liabilities : uninsured employers



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TAXATION RULING NO.IT 2098

DEDUCTIONS FOR WORKERS' COMPENSATION LIABILITIES :
UNINSURED EMPLOYERS

F.O.I. EMBARGO: May be Released

REF

H.O. REF: 84/1109-3

DATE OF EFFECT: Immediate

B.O. REF:

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F.O.I. INDEX DETAIL

REFERENCE NO:

SUBJECT REFS:

LEGISLAT. REFS:

I 1121792

WORKERS' COMPENSATION

51(1)

PREAMBLE

The various workers' compensation acts operating in Australia provide that, where a worker suffers injury, etc. arising out of the employment, the employer is liable to pay compensation. Compensation payable includes weekly payments to the injured employee, reasonable medical, etc. expenses and, in the case of specific injuries, lump sum payments. Alternative remedies under general law are permitted provided the appropriate action is commenced within the statutory time limit.

2. Employers are required to take out a policy of insurance for the full amount of their liability under the workers' compensation acts. This requirement may be waived, however, in cases of employers who have adequate financial resources to meet all probable claims against them under the legislation and where the relevant Minister has granted exemption from the requirement to insure.

3. In those cases where the employer is permitted to carry his own workers' compensation insurance, or as it is sometimes said to self insure, it is the practice of the employer to set aside an amount, or to make provision in his accounts of an amount, sufficient to meet expected workers' compensation liabilities in respect of injuries which have occurred to employees up to and including balance date.

4. The question has arisen whether the employer is entitled to an income tax deduction under sub-section 51(1) for the amount set aside or the amount of the provision. It has been suggested that the decisions in RACV Insurance Pty. Ltd. v. F.C. of T. 74 ATC 4169 : 4 ATR 610 and Commercial Union Assurance Co. of Australia Ltd. v. FCT 77 ATC 4186 : 7 ATR 435 are authority for the allowance of the deduction.

RULING

5. It is not accepted that employers who carry their own workers' compensation insurance are entitled to income tax deductions for amounts set aside or amounts provided in their accounts to meet expected workers' compensation liabilities. The decisions in the two cases referred to are considered to be restricted to insurance businesses. Their effect is that, for the purposes of sub-section 51(1), general insurance companies

incur losses and outgoings in respect of claims arising under policies at the time the events insured against happen. That the decisions apply very much to insurance businesses appears in this extract from the Commercial Union case at 77 ATC 4189 : 7 ATR 438:

"Putting it broadly, the true profit of an insurance business in respect of any year can be no more than what remains after deducting from the premiums earned in that year, all the claims arising out of the insurances in respect of which those premiums were earned, and also of course the administration and like expenses referable to that year; and in the nature of things many of the claims arising out of the insurances in respect of which the premiums were earned will still be unpaid at the end of the year and will include claims incurred but not reported. The cost to an insurer of the earned premiums in any year is the amount of all claims arising out of the insurances in respect of which those premiums were earned, plus administration and like expenses referable to that year."

6. The situation which applies to an insurance business does not arise in the case of an employer who carries his own workers' compensation insurance. There are no premiums against which the workers' compensation liability is to be offset. It is simply a situation of setting aside an amount or making provision of an amount to meet expected workers' compensation liabilities.

7. For the purposes of sub-section 51(1), therefore, employers who carry their own workers' compensation liability will incur losses and outgoings in respect of workers' compensation when an obligation falls upon the employer to make payments to employees and/or their personal representative. In practice deductions for workers' compensation liabilities are to be allowed to uninsured employers on the following basis:

- (a) Weekly payments - in the year due to the employee;
- (b) Medical etc. expenses - in the year liability is accepted by or awarded against the employer;
- (c) Lump sum payments -
 - (i) in the year in which agreement is reached and registered under the relevant Act, or
 - (ii) in the year a determination is made under the particular State Act by the relevant Court, or
 - (iii) in the case of an alternative remedy, e.g. under common law, in the year judgment is handed down by a Court of competent and civil jurisdiction.

COMMISSIONER OF TAXATION
16 August 1984

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