IT 2583 - Income tax : variation of tax instalment deductions allowances paid under industrial instruments

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TAXATION RULING NO. IT 2583

INCOME TAX : VARIATION OF TAX INSTALMENT DEDUCTIONS ALLOWANCES PAID UNDER INDUSTRIAL INSTRUMENTS

F.O.I. EMBARGO: May be released

REF N.O. REF: J237/18/7Pt3 87/3941-2 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1011864	COLLECTION OF TAX BY INSTALMENTS VARIATION FROM PRESCRIBED RATES	221D

OTHER RULINGS ON TOPIC: IT 2200, IT 2299, IT 2300, IT 2414, IT 2487, IT 2488

PREAMBLE This Ruling supersedes Taxation Ruling No. IT 2488 and updates the guidelines for exercising the discretion available in section 221D in relation to employees in receipt of allowances paid under an "industrial instrument" as defined in section 82KT (i.e., a law of the Commonwealth or of a State or Territory or an award, order, determination or industrial agreement in force under any such law).

2. Section 221D of the Income Tax Assessment Act provides the Commissioner of Taxation with the authority to vary the amount of tax instalments to be deducted from the salary or wages of an employee, or class of employees, in order to meet the special circumstances of any case or class of cases.

RULING 3. Special circumstances as envisaged by section 221D will be accepted as applying to employees in receipt of allowances prescribed by industrial instruments, and variations may be granted so as to free the amount of allowance from instalment deductions, where:

(a) the employee can reasonably be expected to incur expenditure of an amount at least equal to the amount of the allowance paid;

(b) the allowance can reasonably be expected to be expended for the purpose for which it is paid; and

(c) the expenditure to which the allowance relates can reasonably be expected to be deductible on assessment.

Substantiation of expenditure

4. It should be understood that an approval to vary the prescribed rate of tax instalment deductions will not absolve an employee from the substantiation provisions of the income tax law.

5. Approval of variations for those allowances which may give rise to an obligation to substantiate expenditure will be subject to the following conditions:

(a) the amount and nature of the allowance must appear separately on the group certificate or tax stamp sheet of the employee in receipt of the allowance;

(b) the amount and nature of the allowance must be shown separately in the accounting records of the employer;

(c) a request for variation of instalments is actually made by an organisation or association representing employees or employers, or an individual employee or employer; and

(d) deduction of instalments at the prescribed rates, on account of the likely deductibility of the expenditure, would in the general run of cases result in actual deductions exceeding expected tax by the lesser of 10% or $500.

6. In relation to allowances prescribed by industrial instruments, expenditure of which is not subject to the substantiation provisions of the income tax law, i.e.,

- overtime meal allowances that are reasonable in terms of the guidelines in Taxation Ruling No. IT 2326;

- eligible transport payments which satisfy the requirements of section 82KZBA; and

- travel allowances that are reasonable in terms of the guidelines in Taxation Ruling No. IT 2327,

there is no requirement to show the allowance on group certificates or tax stamp sheets provided all of the other conditions set out in paragraph 5 of this ruling are met. An exception to this rule applies to eligible transport payments, as is highlighted in paragraph 7.

7. An allowance which ceases to be excluded from the substantiation rules will again be subject to all the conditions set out in paragraph 5 of this ruling. So too will an eligible transport allowance, paid in the form of a transport allowance payment, that has increased beyond the amount payable under its award as at 29 October 1986. This is not withstanding that the expenditure claimed by the employee in respect of that allowance

might not necessarily have ceased to be excluded from the substantiation rules.

8. Where the rate of a transport allowance payment has increased from the 29 October 1986 rate, expenditure to which it relates continues to be free from the substantiation provisions where the recipient employee claims a deduction against the allowance not exceeding the rate at that date. Where the taxpayer claims in excess of the amount payable at that date, the whole amount claimed will be subject to substantiation.

9. It should also be noted that a decision to grant a variation of instalment deductions is subject to the necessary reservation that it is made on the basis of the income tax law as it exists at the time the decision is made. The deductibility of the expenditure concerned will ultimately be determined by applying to the established facts the income tax law as it exists at the time of assessment.

COMMISSIONER OF TAXATION
10 May 1990