



ATO Interpretative Decision

ATO ID 2003/506

Income Tax

Taxation obligations of company administrators


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ATO ID 2003/506 history

	Date	Version
	16 May 2003	Original statement
You are here →	5 July 2016	Updated statement

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Issue

Does section 254 of the *Income Tax Assessment Act 1936* (ITAA 1936) apply to make an administrator appointed under Part 5.3A of the *Corporations Act 2001* (Corporations Act), personally liable for income tax assessed to the company in relation to which they are appointed?

Decision

Yes. An administrator is a trustee of the company for the purposes of section 254 of the ITAA 1936. An administrator is personally liable under paragraph 254(1)(e) for the tax payable in respect of income, or profits or gains of a capital nature derived by virtue of that representative capacity. However, the administrator is only liable to the extent of the amount of money that the administrator has retained or should have retained under the authority and requirement to do so in paragraph 254(1)(d) of the ITAA 1936.

Facts

An administrator is appointed under the Corporations Act Part 5.3A and income is derived during the company's administration.

Reasons for Decision

Section 254 of the ITAA 1936 applies to an entity that is an agent or trustee for the purposes of the ITAA 1936 and 1997. Section 254 contains provisions which describe the duties and obligations of persons who act as the agents or trustees of taxpayers.

'Trustee' is defined in subsection 6(1) of the ITAA 1936 as follows:

"trustee" in addition to every person appointed or constituted trustee by act of parties, by order, or declaration of a court, or by operation of law, includes:

- (a) an executor or administrator, guardian, committee, receiver, or liquidator; and
- (b) every person having or taking upon himself the administration or control of income affected by any express or implied trust, or acting in **any fiduciary capacity**, or having the possession, control or management of the income of a person under any legal or other disability [emphasis added]

Paragraph (b) of the definition of 'trustee' refers to 'every person ... acting in any fiduciary capacity'. In *James v. Deputy Federal Commissioner of Taxation* (1988) 19 ATR 1752; 88 ATC 4812 the Court held that a scheme manager appointed under a Scheme of arrangement was a trustee for the purposes of section 221P of the ITAA 1936 as he was acting in a fiduciary capacity within paragraph 6(1)(b) of the definition of trustee in the ITAA 1936.

An administrator appointed under Part 5.3A of the Corporations Act is also acting in a fiduciary capacity. In exercising the powers given to an administrator under section 437A of the Corporations Act, the administrator does not exercise the powers, nor are the powers given to the administrator, for personal benefit, but for the benefit of the company. The administrator is consequently acting in a fiduciary capacity and is a trustee for the purposes of the ITAA 1936 including section 254.

Paragraph (a) of subsection 254(1) of the ITAA 1936 provides that a trustee is answerable as taxpayer 'for the payment of tax' on the income, or any profits or gains of a capital nature, derived by him in his representative capacity. Paragraph (b) of subsection 254(1) provides that a trustee is assessed on that income or those profits or gains 'but in his representative capacity only'. In *Fermanis v. Cheshire Holdings Pty Ltd* (1989) 20 ATR 1862; 90 ATC 4201 Murray J held at ATR 1865; ATC 4203 in relation to section 254:

What is clear about that provision is that it creates of itself no tax liability, which is to be otherwise derived from the provisions of the Act, so that if a tax liability is not otherwise to be drawn from the statute, none will be created by sec 254 . . .

It is clear, I think, that the provision operates as a machinery provision to facilitate tax collection in

relation to liable trust income when the liability is otherwise imposed than by sec. 254.

Therefore, section 254 of the ITAA 1936 does not create a personal responsibility in the administrator for tax assessed to the company. However, it makes the administrator liable to pay tax on income, profits or gains of a capital nature derived by the administrator in their capacity as trustee (for tax purposes) of the company.

Paragraph 254(1)(d) of the ITAA 1936, to that end, authorises and requires a trustee to retain out of any money that is received in that representative capacity, an amount sufficient to pay that tax. The administrator is then under paragraph 254(1)(e) of the ITAA 1936 made personally liable for the tax assessed in respect of the income, profits or gains resulting from the administration to the extent that money has been retained or should have been retained.

Consequently, the administrator has a personal liability to pay income tax as an administrator for a particular company. However, that liability only extends to money that has come to the administrator in that representative capacity and which the administrator has been authorised and required to retain, and which has been retained or should have been retained for the purpose of paying the income tax.

Amendment History

Date of Amendment	Part	Comment
5 July 2016	Related ATO Interpretative Decisions	Updated Related ATO Interpretative Decisions to ATO ID 2005/257

Date of decision: 16 May 2003

Year of income: Year ended 30 June 2003

Legislative References:

Income Tax Assessment Act 1936

subsection 6(1)
section 254
subsection 254(1)
paragraph 254(1)(b)
paragraph 254(1)(d)
paragraph 254(1)(e)
section 221P

Corporations Act 2001

Part 5.3A
section 437A

Case References:

James v. Deputy Federal Commissioner of Taxation

(1988) 19 ATR 1752
88 ATC 4812

Fermanis v. Cheshire Holdings Pty Ltd

(1989) 20 ATR 1862
90 ATC 4201

Related ATO Interpretative Decisions

ATO ID 2005/257

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Administrative law
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