


TD 94/D30 - Income tax: is there a deemed assessment under subsection 166A(1) of the Income Tax Assessment Act 1936 when a company furnishes a return for a year of income specifying that its taxable income is nil?

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Draft Taxation Determination

Income tax: is there a deemed assessment under subsection 166A(1) of the *Income Tax Assessment Act 1936* when a company furnishes a return for a year of income specifying that its taxable income is nil?

1. No. The deeming provisions contained in subparagraphs 166A(1)(a) (i) and (ii) do not apply because no amount of income tax is payable by the company in respect of the year of income.
2. Under paragraph 166A(1)(a), the Commissioner is deemed to have made an assessment if either subparagraph 166A(1)(a)(i) or subparagraph 166A(1)(a)(ii) applies.
3. Subparagraph 166A(1)(a)(i) applies when a relevant entity is required to make a final payment under section 221AZD in respect of the year of income. A relevant entity is not required to make a final payment under section 221AZD when no amount of income tax is payable by it in respect of its taxable income of the year of income.
4. Subparagraph 166A(1)(a)(ii) also does not apply when no amount of income tax is payable by a relevant entity in respect of the year of income.
5. No amount of income tax is payable by a company when its taxable income for a year of income is nil. Thus, neither subparagraph 166A(1)(a)(i) nor subparagraph 166A(1)(a)(ii) applies. There is no deemed assessment under subsection 166A(1).
6. If, at a later date, the Commissioner issues an assessment to increase the company's taxable income, that assessment is an original assessment and not an amended assessment. The Commissioner's power to issue that assessment is subject to the time limitations contained in section 170.

Example

ABC Pty Ltd furnishes its return of income for the year ended 30 June 1992 on 15 March 1993. It specifies assessable income of \$8,100.00 and allowable deductions of \$8,250.00. The company's taxable income for the year ended 30 June 1992 is nil and no amount of income tax is payable.

There is no deemed assessment under subsection 166A(1).

In January 1998 (more than four years later), the Commissioner forms the opinion that assessable income of \$1,750.00 was omitted from the company's 1992 year return and issues an assessment to increase the company's taxable income to \$1,600.00 (\$8,100.00 - \$8,250.00 + \$1,750.00). This assessment is an original assessment. The Commissioner's power to issue this assessment is not subject to the four year time limitation contained in subparagraph 170(2)(b)(i).

Commissioner of Taxation

31/3/94

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