

TD 92/201 - Income tax: if an employee is paid by a cheque which is later dishonoured, is he or she entitled to a deduction for a bad debt under section 63 of the Income Tax Assessment Act 1936 ?

 This cover sheet is provided for information only. It does not form part of *TD 92/201 - Income tax: if an employee is paid by a cheque which is later dishonoured, is he or she entitled to a deduction for a bad debt under section 63 of the Income Tax Assessment Act 1936 ?*

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, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: if an employee is paid by a cheque which is later dishonoured, is he or she entitled to a deduction for a bad debt under section 63 of the *Income Tax Assessment Act 1936* ?

1. No, but this does not mean the employee is assessable on income that he or she has not actually received. It is considered that where salary or wages are paid by a cheque which is later dishonoured, it is not assessable income of the salary or wage earner.
2. A salary or wage earner operates on a cash receipts basis and, by definition, can never have a bad debt for taxation purposes. As a consequence, he or she is not entitled to a deduction under section 63.
3. However, salary or wage income is only assessable when it has been derived, and salary or wages are only derived when paid. In *Tilley v. Official Receiver in Bankruptcy* (1960) 103 CLR 529 at 535 Kitto J, in an observation on payment by cheque, stated that -

'There can be no doubt that the acceptance of a payment by cheque implies, if there be nothing to the contrary, an agreement that it shall be considered as payment, subject to the condition subsequent that if the cheque be dishonoured it shall no longer be so considered.'

In *Mackenzie v. Rees* (1941) 65 CLR 1 at 15, Dixon J expressed a similar view.

4. In a New Zealand case, *Ullrich v. Commissioner of Inland Revenue* (1963) 13 ATD 321 at 323, Perry J stated that an amount is derived by a person only where it has been -

'credited in account or reinvested or accumulated or capitalised or carried to any reserve, sinking or insurance fund or otherwise dealt with in his interest or on his behalf.'

His Honour reviewed the authorities on the subject of payment by cheque and concluded that they -

'establish that the giving of a cheque is payment conditional on its being met.'

5. Accordingly, where salary or wages are paid by cheques which are later dishonoured, there is no payment received and hence no derivation of income.

Example: An employee receives a cheque on 29/6/92 for \$500. The \$500 is included in the group certificate and is returned as assessable income. On 20/7/92 the cheque is dishonoured. The employee cannot claim a deduction for a bad debt, but may amend his return to reduce his assessable income by \$500.

Commissioner of Taxation

17/12/92

LAST DETERMINATION

This is the last Taxation Determination for the 1992 calendar year. The next Determination will be Taxation Determination TD 93/1.

FOI INDEX DETAIL: Reference No. I 1213798

Previously issued as Draft TD 92/D208

Related Rulings: TR 92/18

Subject Ref: bad debts; employees

Legislative Ref: ITAA 63

Case Ref: Tilley v Official Receiver in Bankruptcy (1960) 103 CLR 529; Mackenzie v Rees (1941) 65 CLR 1; Ullrich v. Commissioner Of Inland Revenue (1963) 13 ATD 321

ATO Ref: New TD23

ISSN 1038 - 8982