



TD 94/35 - Income tax: during the course of a year of income, may the Commissioner of Taxation refund to an employer excess tax instalment deductions (TIDs) paid by the employer under the pay-as-you-earn (PAYE) arrangements, where the excess TIDs, mistakenly, were not made in accordance with the rates prescribed?

 This cover sheet is provided for information only. It does not form part of *TD 94/35 - Income tax: during the course of a year of income, may the Commissioner of Taxation refund to an employer excess tax instalment deductions (TIDs) paid by the employer under the pay-as-you-earn (PAYE) arrangements, where the excess TIDs, mistakenly, were not made in accordance with the rates prescribed?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 5 May 1994

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, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: during the course of a year of income, may the Commissioner of Taxation refund to an employer excess tax instalment deductions (TIDs) paid by the employer under the pay-as-you-earn (PAYE) arrangements, where the excess TIDs, mistakenly, were not made in accordance with the rates prescribed?

1. Yes. While there is no express power in Division 2 of Part VI of the *Income Tax Assessment Act 1936* (the PAYE provisions) to refund excess TIDs, the High Court of Australia in *David Securities Pty Ltd & Ors v. Commonwealth Bank of Australia* (1992) 175 CLR 353; 92 ATC 4658; (1992) 24 ATR 125, indicates that moneys paid under a mistake of fact or law are refundable to the payer. This decision enables the Commissioner to refund to an employer excess TIDs which were mistakenly paid during the course of a year of income.
2. Before excess TIDs can be refunded, employers or employees will need to advise the Commissioner that the excess TIDs were paid in the mistaken belief that the prescribed rates were higher than what was the actual rate. As the TIDs would be refunded to the employer in these circumstances it would not be necessary for the Commissioner to use the power in section 221D to vary the TIDs from future salary or wages of the employer's employees so as to enable the excess TIDs to be taken into account during the income year.
3. In summary, the refund of excess TIDs will involve the following steps:
 - (i) a request to the Commissioner, made by either an employee or the employer, to refund the excess TIDs;
 - (ii) the Commissioner refunding the excess TIDs to the employer, who in turn would pay the excess to the relevant employee; and
 - (iii) the employer reissuing the employee with a group certificate under subsection 221F(5), which would reflect the reduced TIDs.
4. On assessment of the relevant employees, credit under section 221H will only be given for the sum of TIDs paid and not refunded.

FOI INDEX DETAIL: Reference No. I 1217308

Not previously released as a Draft TD

Related Determinations:

Related Rulings:

Subject Ref: mistake; overpayment; tax instalment deductions; lump sum payment

Legislative Ref: ITAA Pt VI Div 2; ITAA 221D; ITAA 221F(5); ITAA 221H

Case Ref: David Securities Pty Ltd & Ors v. Commonwealth Bank of Australia (1992) 175 CLR 353

ATO Ref: NAT 94/331-2

ISSN 1038 - 8982