



TD 94/35W - 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 94/35W - 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 16 July 2008



Notice of Withdrawal

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?

Taxation Determination TD 94/35 is withdrawn with effect from today.

1. This Determination explained that while there was no express power in Division 2 of Part VI of the *Income Tax Assessment Act 1936* 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, indicated that moneys paid under a mistake of fact or law are refundable to the payer. This decision enabled the Commissioner to refund to an employer excess TIDs which were mistakenly paid during the course of a year of income.
2. The Pay As You Go (PAYG) withholding system, which expressly provides relevant refund rules under Subdivision 18-B of Schedule 1 to the *Taxation Administration Act 1953*, replaced the PAYE system for the 2000-2001 income year and later income years.
3. Accordingly, this Taxation Determination is no longer current.

Commissioner of Taxation

16 July 2008

ATO references

NO: 2006/20258

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Withholding Tax ~~ pay as you go withholding