



***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*



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## Notice of Withdrawal

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### 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Taxation Determination TD 94/35 is withdrawn with effect from today.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 Accordingly, this Taxation Determination is no longer current.

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**Commissioner of Taxation**

16 July 2008

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ATO references

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