




TD 93/156 - Income tax: is a refund notice an 'assessment' for the purposes of the Income Tax Assessment Act 1936 when a taxpayer has a taxable income above the tax-free threshold but is entitled to franking rebates in excess of the amount of tax otherwise payable and a refund notice issues to refund existing PAYE credits to the taxpayer?

 This cover sheet is provided for information only. It does not form part of *TD 93/156 - Income tax: is a refund notice an 'assessment' for the purposes of the Income Tax Assessment Act 1936 when a taxpayer has a taxable income above the tax-free threshold but is entitled to franking rebates in excess of the amount of tax otherwise payable and a refund notice issues to refund existing PAYE credits to the taxpayer?*

 This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

 This document has changed over time. This is a consolidated version of the ruling which was published on 29 November 2006

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: is a refund notice an 'assessment' for the purposes of the Income Tax Assessment Act 1936 when a taxpayer has a taxable income above the tax-free threshold but is entitled to franking rebates in excess of the amount of tax otherwise payable and a refund notice issues to refund existing PAYE credits to the taxpayer?

1. No. The imposition of a tax liability is an essential feature of an assessment. A nil assessment is an impossibility (*DFC of T v Sheehan* 86 ATC 4718 at 4724; (1987) 18 ATR 194 at 201).
2. No tax is payable under the refund notice because the taxpayer's rebate entitlements (under section 160AQU) exceed the tax which would otherwise be payable by the taxpayer on the taxable income. Such a refund notice does not impose any tax liability (*Case W69* 89 ATC 618 at 626; *AAT Case 5237* (1988-89) 20 ATR 3806 at 3814). It is not an assessment for the purposes of the Act.
3. The taxpayer would not, for example, have any right under section 175A to object against the refund notice.
4. If, at a later date, the Commissioner issues an assessment to increase the taxpayer's taxable income, that assessment would be an original assessment and not an amended assessment. It would not be subject to the time limitations contained in section 170.

Example

A taxpayer's return of income for the year ended 30 June 1992 discloses the following:

| | |
|-------------------------------|----------------|
| Salary & wages | \$6,000 |
| (PAYE deductions of \$150.00) | |
| Dividends: franked amount | \$610 |
| imputation credit | <u>\$390</u> |
| | <u>\$1,000</u> |
| Taxable Income | \$7,000 |

The taxpayer's franking rebate entitlements of \$390.00 completely offset the tax of \$320.00 which would otherwise be payable by the taxpayer on the taxable income of \$7,000. A refund notice issues on 10 April 1993 to refund the PAYE credits of \$150.00 to the taxpayer.

This refund notice is not an assessment for the purposes of the Act. The taxpayer cannot object against the refund notice under section 175A.

In January 1998 (more than four years later), the Commissioner forms the opinion that interest income of \$4,000 was omitted from the taxpayer's 1992 year return and issues an assessment to increase the taxpayer's taxable income to \$11,000 (\$7,000 + \$4,000). This assessment is an original assessment. It is not, for example, subject to the four year time limitation contained in subparagraph 170(2)(b)(ii). Normal objection rights would, of course, attach to this original assessment.

Commissioner of Taxation

12/8/93

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Related Determinations:

Related Rulings:

Subject Ref: Assessment

Legislative Ref: ITAA 6(1); 160AQU; 166; 169; 170; 175A

Case Ref: Batagol v FC of T (1963) 109 CLR 243; DFC of T v Sheehan 86 ATC 4718, (1987) 18 ATR 194; Case W69 89 ATC 618, AAT Case 5237 (1988-89) 20 ATR 3806

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