TD 93/D11 - Income tax: do credits of tax instalment deductions constitute "an amount of relevant tax paid by a person" for the purposes of subsection 9(1) of the Taxation (Interest on Overpayments) Act 1983 (TIOPA)?

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This document has been finalised by TD 93/50.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: do credits of tax instalment deductions constitute "an amount of relevant tax paid by a person" for the purposes of subsection 9(1) of the *Taxation (Interest on Overpayments) Act 1983* (TIOPA)?

1. Yes. Where the amount of tax instalments deducted from the salary or wages of an employee exceeds the tax liability assessed for the year of income, paragraph 221H(2)(b) of the *Income Tax Assessment Act 1936* requires the excess tax instalments to be credited against any other tax payable by the employee.

2. Subsection 9(4) of the TIOPA operates so that when tax instalments deducted by an employer are credited against the tax liability of an employee, the employee is deemed to have paid the tax to the extent of the amount so credited. The provision operates generally where an amount paid by one person has been applied against the tax liability of another person.

3. The crediting or absorption of the tax instalments against tax outstanding is "an amount of relevant tax...paid by a person" for the purposes of subsection 9(1) of the TIOPA. The employee is deemed to have paid that amount on the day on which the amount is applied against the employee's tax liability, usually the date of the relevant assessment.

Example:
A taxpayer lodges an objection against his/her 1990/91 tax assessment of $1,000. The assessment is not paid. On 31 July 1992, the taxpayer's 1991/92 assessment issues with excess tax instalments of $400 over the tax assessed for the year. The excess tax instalments are applied against the tax outstanding. The taxpayer's objection to the 1990/91 assessment is allowed and the $400 previously withheld in respect of the 1991/92 assessment is then refunded. The taxpayer is deemed to have paid $400 to the Commissioner on 31 July 1992 towards the outstanding 1990/91 tax for the purposes of calculating interest on overpayments.

Commissioner of Taxation
21/01/93

FOI INDEX DETAIL: Reference No.
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Subject Ref: interest on overpayments, overpaid tax, tax refunds, taxation objections and appeals
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