

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: 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 taxfree 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	\$390
	\$1,000
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).

Commissioner of Taxation

10/6/93

FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings:

Subject Ref: assessment; refunds

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

Case Ref: 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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