

# ***TD 98/D7 - Income tax: what is the approved form and manner of lodgment for an election to roll-over an eligible termination payment?***

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This document has been finalised by TD 98/26.

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: what is the approved form and manner of lodgment for an election to roll-over an eligible termination payment?**

1. Subsection 27D(1) of the *Income Tax Assessment Act 1936* (ITAA) provides that a taxpayer may make an election in respect of a qualifying eligible termination payment. A qualifying eligible termination payment is a payment immediately paid to a roll-over institution in accordance with subsection 27A(12). Where an election is made in relation to a qualifying eligible termination payment the amount is regarded as 'rolled-over' under paragraph 27A(13)(a).

2. Subsection 27D(3) states that an election shall:
- (a) be in a form approved by the Commissioner; and
  - (b) be lodged with the Commissioner within such time, and in such a manner, as is prescribed.

#### **Form approved by the Commissioner**

3. Where a taxpayer, or an agent of the taxpayer, gives instructions satisfying the requirements of regulation 99E of the *Income Tax Regulations* to a payer to roll-over all or part of an eligible termination payment the instructions are an approved form of election under subsection 27D(3).

#### **Manner of lodgment prescribed**

4. The Commissioner does not prescribe the manner in which an election must be made. However, a taxpayer who gives instructions of the kind mentioned in paragraph 3 is required, under regulation 99I, to keep a copy of the instructions for 5 years from the date they were given. A taxpayer is not required to provide a copy of the instructions to the Commissioner except when requested for audit purposes.

#### **Effect of election**

5. The rolled-over amount is not included in the taxpayer's assessable income (sections 27AC, 27B and 27C). If payment is not made to a roll-over institution as instructed, and accordingly no 'qualifying eligible termination payment' is made under subsection 27A(12), the taxpayer's election ceases to have effect.

#### **Example**

6. *Kim is changing jobs and instructs her employer sponsored superannuation fund to roll-over her lump sum benefit to a new superannuation provider. Payment is duly made to the new superannuation provider. Kim must keep a record of the instructions given for 5 years. The instructions represent Kim's election to roll-over an eligible termination payment and the payment*

*to the new superannuation provider is taken to have been applied in accordance with the election. The amount of the lump sum rolled-over is not included in Kim's assessable income. Kim is not required to lodge her election, or any documentation regarding the rolled-over amount, in her income tax return.*

**Your comments**

7. If you want to comment on this draft Determination, please send your comments by 24 July 1998 to:

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**Commissioner of Taxation**24 June 1998

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FOI INDEX DETAIL: [Reference No.](#)[Related Determinations:](#)[Related Rulings:](#)[Subject Ref:](#) eligible termination payments; ETP rollover; superannuation[Legislative Ref:](#) ITAA 27D(1); ITAA 27D(3); ITAA 27A(12); ITAA 27A(13)(a); ITAA 27AC; ITAA 27B;  
ITAA 27C; ITR 99E; ITR 99I[Case Ref:](#)[ATO Ref:](#) NAT 98/6075-4

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