TD 93/D121 - Income tax: is a payment received under a voluntary redundancy package a bona fide redundancy payment for the purposes of section 27F of the Income Tax Assessment Act 1936 ?

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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 payment received under a voluntary redundancy package a bona fide redundancy payment for the purposes of section 27F of the *Income Tax Assessment Act 1936*?

1. No. For a payment to be a bona fide redundancy payment under section 27F there must be a dismissal by reason of bona fide redundancy. Paragraph 19 of Taxation Ruling No. IT 2286 states that the term **"dismissal"** carries with it the concept of the **involuntary** (on the employee's part) termination of employment . (Refer also to *Stroud's Judicial Dictionary*.)

2. Payments which fall within the terms of section 27F are treated concessionally. That is, only 5% of the bona fide redundancy payment is included in the taxpayer's assessable income and taxed at the taxpayer's marginal rate of tax.

3. In the case of a voluntary redundancy package, the employee takes advantage of the invitation made by the employer to receive the voluntary redundancy package and has his or her employment terminated. This does not constitute a **"dismissal"** even though the ultimate decision of whether or not the contract of employment should be terminated, remains with the employer (*Birch and Another v. University of Liverpool* [1985] IRLR 165). The termination is made by **"mutual agreement"** and is considered to be voluntary.

4. Payments made under a voluntary redundancy package may fall within the terms of section 27E which deals with early retirement scheme payments. If the requirements of this section are met, the payments are treated concessionally. These early retirement schemes require our approval **before** payments are made under the scheme. If approval is **not granted**, then the payments are **not** treated concessionally.

Example 1:

*XYZ Pty Ltd needs to reduce its staff numbers from 200 to 100. A redundancy package is **offered** to all employees. One hundred of the staff accept the offer to receive the redundancy package and their employment is terminated.*

*As the employees **voluntarily** take advantage of the employer's offer, the terminations of employment **do not** constitute dismissals. Therefore, the payments made under the redundancy package **are not** bona fide redundancy payments under section 27F.*

For the payments to be treated concessionally the employer needs our approval of the early retirement scheme under section 27E.

Example 2:

ABC Pty Ltd needs to reduce its staff numbers from 200 to 100. As a result 100 employees are laid off and paid a redundancy package.

In this case the terminations of employment are ***involuntary****. Therefore, the payments made under the redundancy package are bona fide redundancy payments under section 27F and are treated concessionally.*

Commissioner of Taxation
20/5/93

FOI INDEX DETAIL: Reference No.

Related Rulings: IT 2286

Subject Ref: redundancy; bona fide redundancy payment; retrenchment; dismissal; termination and suspension of employment; voluntary redundancy package; early retirement; approved early retirement scheme payment

Legislative Ref: ITAA 27F(1); ITAA 27E(1)

Case Ref: *Birch and Another v. University of Liverpool* (1985) IRLR 165

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