IT 2060 - Commuted lump sum pension entitlements

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TAXATION RULING NO. IT 2060

COMMUTED LUMP SUM PENSION ENTITLEMENTS

F.O.I. EMBARGO: May be released

REF H.O. REF: 4 J172/21 Pt.5 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1115235	COMMUTED LUMP SUM PENSION ENTITLEMENTS	26(d)

FACTS

This office has had occasion to consider the income tax implications of an option to be given to former employees of a taxpayer to commute the whole of their pension entitlements in return for a lump sum payment.

2. Under the taxpayer's superannuation arrangements retired employees were eligible to receive a pension. Many of them had been receiving pensions for a number of years. Following a merger with another taxpayer whose superannuation arrangements provided for a lump sum payment in commutation of pension entitlements the retired employees of the first taxpayer were given the opportunity of commuting the balance of their pension entitlements in return for a lump sum payment.

RULING

3. The circumstances of this situation differ from those considered by the Federal Court in McIntosh v. FCT, 79 ATC 4325 : 10 ATR 13, where the right to commute existed at the date of retirement and the taxpayer exercised that right within one week of retirement. In the present situation the right of commutation arose only as a result of the merger, in many cases years after retirement had taken place. In these circumstances any lump sum paid to retired employees in commutation of their pension entitlements could not be said to have been paid in consequence of retirement from, or termination of, any office or employment. Accordingly, paragraph 26(d) will not have any application to the payments.

4. It follows, therefore, that lump sum amounts received prior to 1 July 1983 will not form part of a retired employee's assessable income. Lump sum amounts received after 1 July 1983 will be liable to tax on a pro rata basis in accordance with the Treasurer's announcement for the taxing of lump sum payments.

COMMISSIONER OF TAXATION
20 September 1983