IT 2341 - Income tax : eligible termination payments - extension of roll-over period

TAXATION RULING NO. IT 2341

INCOME TAX : ELIGIBLE TERMINATION PAYMENTS - EXTENSION OF ROLL-OVER PERIOD

F.O.I. EMBARGO: May be released

REF H.O. REF: 85/19520-4 DATE OF EFFECT: Immediate

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1209799	ELIGIBLE TERMINATION PAYMENTS ROLL-OVER PERIOD	27A

OTHER RULINGS ON TOPIC : IT 2157, IT 2168, IT 2255, IT 2256, IT 2272, IT 2286

PREAMBLE The "roll-over period" (as defined in sub-section 27A(1) of the Income Tax Assessment Act, and as modified by sub-section 27A(6) for payments made before 25 June 1984) in relation to an eligible termination payment is generally the period of 90 days commencing on the day on which the eligible termination payment is made. The period may, however, be extended for such longer period as the Commissioner of Taxation, in special circumstances, allows. Where, within the 90 day (or extended) period, any part of an eligible termination payment is rolled over as provided for in sub-section 27A(12) (that is, it is paid into a superannuation fund or an approved deposit fund or is used to purchase an annuity), the ordinary operation of the assessment provisions of Subdivision AA of Division 2 of Part III of the Assessment Act is deferred until the amount is withdrawn from a fund or is received as a taxable annuity.

2. This Ruling discusses the "special circumstances" in which the roll-over period should be extended.

RULING 3. As a general rule, the roll-over period should be extended where the 90 day period is insufficient for the taxpayer to make adequate arrangements for a roll-over because of circumstances beyond the taxpayer's control. For example, an extension should be granted where the 90 day roll-over requirement cannot be met because the taxpayer or a dependant of the taxpayer is seriously ill. An unavoidable overseas business trip to be undertaken by the taxpayer during the whole or a substantial part of the 90 day period would be another example of circumstances beyond the taxpayer's control. The geographical remoteness of the place of residence of the taxpayer from available roll-over facilities would be a further example.

4. An application for an extension of the 90 day roll-over period should set out fully the special circumstances that the

taxpayer considers make it unreasonable for that period to apply. The application should be sent to the Taxation Office at which the taxpayer normally lodges his or her income tax return. Ordinarily an application would be expected to be made prior to the expiration of the 90 day period, although there will, of course, be cases where an application is made at a later time. Such an application made within a reasonable period after expiration of the 90 day period should be considered on its merits. Where the circumstances are as described in the preceding paragraph, an extension would normally be appropriate.

5. An extension is not to be granted where it is clear that at no time during the 90 day period did the taxpayer have any intention of preserving an eligible termination payment - for example, where the taxpayer used the payment to finance a particular venture and, having subsequently come into funds from another source, seeks to roll-over an amount equal to the whole or part of the original eligible termination payment. However, bearing in mind the purpose of the roll-over provisions (to encourage preservation of eligible termination payments until eventual retirement from the workforce), it may be appropriate to extend the roll-over period in a case where a taxpayer has, in fact, preserved an eligible termination payment (e.g., by depositing it in a bank account) and can establish that he or she was unaware of, misunderstood or was incorrectly advised regarding the roll-over requirements. Here also, an application for an extension would be expected to be made within a reasonable period after expiration of the 90 day period.

6. Where it is decided that an extension of the roll-over period is appropriate, the extension should generally be of at least 28 days from the date of the advice to the taxpayer and, depending on the circumstances in which it has been granted, of no more than 60 days from that date. The advice should be provided in writing, with a request that a copy be included in the taxpayer's relevant income tax return.

COMMISSIONER OF TAXATION
21 July 1986

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