



TD 93/140 - Income tax: if a company ceases carrying on a business which has been transferred to an associated entity, will a payment made by that company to a former employee be an eligible termination payment as defined in subsection 27A(1) of the Income Tax Assessment Act 1936 ?

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 This document has changed over time. This is a consolidated version of the ruling which was published on 15 July 1993

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: if a company ceases carrying on a business which has been transferred to an associated entity, will a payment made by that company to a former employee be an eligible termination payment as defined in subsection 27A(1) of the *Income Tax Assessment Act 1936* ?

1. Yes, provided the payment is, in fact, made in consequence of the termination of employment of the former employee, and is not excluded by the provisions of subparagraphs 27A(1)(a)(i) to (v) of the definition of eligible termination payment.

2. Taxation Ruling IT 2152 dealt with termination of employment as it related to the provisions of former paragraph 26(d). Paragraph 9 of IT 2152 included the statement:

'Where a company or other employer ceases carrying on a business which has been transferred to an associated entity, it will be accepted that the employees of the company have had their employment terminated'.

3. The relevant wording of the former paragraph 26(d), as it relates to the above statement, is similar to that in the definition of eligible termination payment in subsection 27A(1). Therefore the above statement applies equally to the eligible termination payment provisions.

Example:

Ms A, has been employed by X Pty Ltd as a salesperson for several years. X Pty Ltd is a subsidiary of Z Pty Ltd. Z Pty Ltd has decided to disband the sales division of X Pty Ltd and transfer the employees to Z Pty Ltd. In appreciation of Ms. A's prior service, X Pty Ltd makes a payment to her of \$10,000 in consequence of the termination of her employment.

The \$10,000 is an eligible termination payment.

Commissioner of Taxation

15/7/93

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Related Determinations:

Related Rulings: IT 2152

Subject Ref: eligible termination payments

Legislative Ref: ITAA 26(d); ITAA 27A(1)

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