

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: is a payment in lieu of notice on termination of employment an eligible termination payment under subsection 27A(1) of the *Income Tax Assessment Act 1936*?

1. Yes. We consider that a payment in lieu of notice is an eligible termination payment as it is made 'in consequence of' a termination of employment in terms of paragraph 27A(1)(a).

Note: If the termination of employment is by reason of bona fide redundancy, the payment in lieu will be treated as a concessional component where the conditions stated in subsection 27F(1) are satisfied (see TD93/14). Where the termination of employment is under an approved early retirement scheme, the payment in lieu will be treated as a concessional component where the conditions stated in subsection 27E(4) are satisfied. In any other situation, the payment in lieu would need to be apportioned into pre July 83 and post June 83 components depending upon the employee's period of service.

Examples:

1. *An employer dismisses an employee without giving notice. Under the particular award a payment in lieu of notice must be made. The amount received as a payment in lieu is made as a consequence of the termination of employment and is therefore an eligible termination payment.*

2. *An employer is required to give notice of termination of employment to an employee who is to be dismissed. When the period of notice ends, the employment is terminated. During the period of notice the employee continues to perform his or her duties. The remuneration received during this period is salary or wage income.*

Commissioner of Taxation
07/07/94

FOI INDEX DETAIL: Reference No. I 1217641

Previously issued as Draft TD 93/D179

Subject Ref: eligible termination payment; payments in lieu of notice; termination and suspension of employment;
dismissal; bona fide redundancy payment; approved early retirement scheme

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

Related Determination: TD93/14

ATO Ref: SYD/DTD/92/23

ISSN 1038 - 8982