


TD 92/D198 - Income tax: for a lump sum or eligible termination payment rebate under section 159SA of the Income Tax Assessment Act 1936 (ITAA), does the 'applicable rate of tax' for a primary producer refer to the notional rate under subsection 12(2) and subsection 12(3) of the Income Tax Rates Act 1986 (ITRA)?

 This cover sheet is provided for information only. It does not form part of *TD 92/D198 - Income tax: for a lump sum or eligible termination payment rebate under section 159SA of the Income Tax Assessment Act 1936 (ITAA)*, does the 'applicable rate of tax' for a primary producer refer to the notional rate under subsection 12(2) and subsection 12(3) of the Income Tax Rates Act 1986 (ITRA)?

This document has been finalised by TD 92/200.

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: for a lump sum or eligible termination payment rebate under section 159SA of the *Income Tax Assessment Act 1936* (ITAA), does the 'applicable rate of tax' for a primary producer refer to the notional rate under subsection 12(2) and subsection 12(3) of the *Income Tax Rates Act 1986* (ITRA)?

1. Section 159SA of the ITAA allows a rebate (relevant rebate) for annual leave, long service leave and eligible termination payments (LSP/ETP) where the taxpayer's applicable rate of tax is greater than the amount specified in the tables under section 159SB of the ITAA.
2. The applicable rate of tax, in most circumstances, is the general rate of tax under subsection 12(1) of the ITRA. If the taxpayer is a primary producer (PP) subject to the averaging provisions under section 156(4) and section 156(4A) of the ITAA, the applicable rate of tax is the notional rate under subsection 12(2) and subsection 12(3) of the ITRA.
3. The relevant rebate calculation for a primary producer (A*) is different to that of a non-primary producer (B*). The primary production averaging calculation is directly affected by the inclusion of a LSP/ETP amount in taxable income. This effect is offset by the relevant rebate calculation incorporating the notional rates.
4. Therefore, use of the notional rate (PP) instead of the general rate ensures that the relevant rebate is reduced by the same amount as the average rebate is increased. Alternatively, the relevant rebate will also reduce proportionately to a complementary tax reduction.
5. The example on page 2 of this taxation determination illustrates the correct method of calculating the relevant rebate for a primary producer.

Example:

For the 1988-1989 income year, a taxpayer receives primary production income (\$17 880), a non-rebatable eligible termination payment (ETP) (\$196), and a rebatable ETP taxed to a maximum of 12% (\$1287). The relevant rebate under section 159SA of the ITAA is calculated as follows:

A. Using Notional Rates (PP).*

	<u>Actual (\$)</u>	<u>Notional (\$)</u>
1. Taxable Income	19 363.00	18 076.00
2. Tax Assessed	3 761.27	3 388.04
3. Average Income	7 446.00	7 189.00
4. Average Rebate	2 297.11	2 127.43
5. Tax Payable (2. - 3.)	1 464.16	1 260.61
6. Difference between actual and notional tax payable		= \$203.55
7. less: Tax assessed on rebatable ETP (\$1 287 x 12%)		= <u>\$154.44</u>
8. Section 159SA rebate		= \$ 49.11

B. Using General Rates (assuming non-PP status).*

1. Actual tax assessed (\$1 287 x 29%)	= \$373.23
2. less: Tax assessed on rebatable ETP (\$1 287 x 12%)	= <u>\$154.44</u>
3. Section 159SA rebate	= \$218.79

Note: In the above example;

Relevant rebate using general rates	\$218.79
less: Relevant rebate using notional rates	<u>\$ 49.11</u>
	\$169.68

Equals

Average rebate using actual income	\$2 297.11
less: Average rebate using notional income	<u>\$2 127.43</u>
	\$ 169.68

Commissioner of Taxation

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Related Determinations:

Related Rulings:

Subject Ref: lump Sum Payments; Eligible Termination Payments; Primary Producer; Rebates

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