TD 93/D111 - Income tax: are periodic workers' compensation payments made by Comcare, 'pensions' for purposes of the pensions articles in Australia's double taxation agreements (DTAs)?

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Draft Taxation Determination

Income tax: are periodic workers' compensation payments made by Comcare, 'pensions' for purposes of the pensions articles in Australia's double taxation agreements (DTAs)?

1. Yes. The term 'pension' is not defined in any of the DTAs and therefore takes the meaning it has under domestic law. A pension is defined in the Macquarie Dictionary as '1. a fixed periodical payment made in consideration of past services, injury or loss sustained, merit, poverty etc. 2. an allowance or annuity.' Payments made by Comcare under section 19 of the *Commonwealth Employees Rehabilitation and Compensation Act 1988* are fixed periodical payments made in consideration of injury or loss of wages. They are therefore pensions within the ordinary meaning of that term and fall within the operation of the Pensions Article in Australia's DTAs.

2. The Pensions Article in most of Australia's DTAs treats all pensions (including government and social security pensions) as taxable only in the country of residence of the recipient. In some DTAs, government pensions paid in respect of services rendered to that government are dealt with under the Government Service Article rather than the Pensions Article. Since the Comcare payments are made in consideration of injury or loss of wages and not for past services, the payments fall within the Pensions Article and not the Government Service Article in those DTAs.

Commissioner of Taxation
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