


# ***IT 200 - Lump sum payments - application of the reseck decision***

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TAXATION RULING NO. IT 200

LUMP SUM PAYMENTS - APPLICATION OF THE RESECK DECISION

F.O.I. EMBARGO: May be released

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I 1102353	LUMP SUM PAYMENTS	26(d)
	RETIREMENT	
	TERMINATION OF	
	EMPLOYMENT	
	RESECK DECISION-	
	EFFECT	

PREAMBLE In a majority judgment, reported at 75 ATC 4213 5 ATR 538, the High Court has reversed the Supreme Court decision and found that the two payments under consideration satisfied the requirements of section 26(d). The High Court found that the payments were lump sums, that they were allowances and that they were paid only on termination of employment. However, Gibbs and Stephens J.J. explicitly pointed out that it was not open to the Court to hold that the services of the taxpayer were not terminated, this having been admitted as a fact.

RULING 2. Application of that decision should be restricted to cases where the facts are the same as those upon which the decision in Reseck's case was based; that is, that the payments made are lump sums, that they are allowances, gratuities or compensations and that, as a matter of fact, it may be accepted that the services of the employee have been terminated.

3. It would, for example, not be acceptable that a termination of employment had taken place, where an employee ceased work on a particular job on one day and then resumed work on another job some distance away with the same employer on the next day or within a period not inconsistent with the normal conditions of the industry in which he is employed. In such a case, the High Court's decision in Reseck's case should not be applied and any lump sum payment received on cessation of the first job would be assessable in full.

COMMISSIONER OF TAXATION