



IT 248 - Deceased employees : payments in respect of furlough and recreation leave

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 This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING NO. IT 248

DECEASED EMPLOYEES : PAYMENTS IN RESPECT OF FURLOUGH
AND RECREATION LEAVE

F.O.I. EMBARGO: May be released

REF

H.O. REF: J78/238 F230

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I 1102030

FURLOUGH LEAVE

26(d)

RECREATION LEAVE

101A

DECEASED EMPLOYEES

LUMP SUM PAYMENTS

PREAMBLE

Consideration has been given to the appropriate income tax treatment of lump sum payments in respect of untaken furlough and recreation leave paid to dependants or the legal personal representative of a deceased employee generally.

RULING

2. It seems clear enough that s.26(d) was not intended to have application to these payments, and this is so, whether the deceased employee had been a member of the Commonwealth public service or employed by a private employer, State government or other body. It has been the practice of this Office in the past to apply the section only where the recipient of the lump sum is the particular taxpayer who has retired or terminated his office or employment. On this basis, neither a payment to the dependants nor to the personal representative would be assessable under s.26(d).

3. Nor, it is thought, does s.101A operate in conjunction with s.26(d) to bring in 5 per cent of any amount paid to the deceased employee's estate. To do this, the section would have to refer to the receipt of an amount, a proportion of which would have been assessable in the hands of the deceased. Of course it does not say this and, in its literal terms, cannot operate to bring 5 per cent of the amount received into the net income of the trust arising on the death of the deceased employee.

4. Having reached this conclusion, it remains to consider whether s.101A, standing alone, applies to bring to tax the full amount received in a lump sum. Again, it is considered that the answer is in the negative.

5. In the general run of cases, a continuing employee would not have received the payment except in respect of a period of furlough or leave actually taken, and only in such a case would it ordinarily be assessable in full. If paid in lieu of leave, say on retirement, it would be not the amount paid, but only 5 per cent of it, that would be assessable, and then

only by virtue of s.26(d) which, as mentioned above, has no application.

6. In these circumstances, it does not seem possible to say that the amount, if received by the deceased employee during his lifetime, would have been assessable income since, to do so, it would be necessary to assume that the payment had been made in respect of leave actually taken by the employee and that assumption would be contrary to the facts. Unless it is established that the amount would have been assessable in full in the hands of the deceased employee if it had been received by him during his lifetime, s.101A cannot apply to bring the payment in as income of a trust estate.

7. Accordingly, no part of a lump sum paid in respect of untaken furlough or recreation leave of a deceased employee, whether received by his dependants or legal personal representative, should be treated as assessable income.

COMMISSIONER OF TAXATION