# *TD 1999/36 - Income tax: should salary continuance benefits, paid to a member of a superannuation fund as a result of having a temporary disability, be reported for Reasonable Benefit Limits (RBL) purposes?*

# Taxation Determination

## Income tax: should salary continuance benefits, paid to a member of a superannuation fund as a result of having a temporary disability, be reported for Reasonable Benefit Limits (RBL) purposes?

**Preamble**

**This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.**

**Date of Effect**

**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 settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).**

1. No. The ATO considers, for RBL purposes, salary continuance benefits are to be regarded as 'replacement of income' benefits rather than 'retirement income' benefits. The regular payments are made in the expectation that the recipient will return to work. Thus, they are treated like salary and wages for income tax purposes and are not subject to RBLs for the duration of the temporary disability.

### What are salary continuance benefits?

2. Salary continuance benefits are insured benefits payable in the event of the temporary disablement of an employee or self-employed person who is a member of the superannuation fund. The benefits are designed to be paid, in full or in part, during prolonged absence from employment or income producing activities because of temporary disability, to:

- replace the salary of an employee;
- provide a minimum level of income to a self-employed person; or
- compensate the policyholder for the salary paid to the employee.

3. The insurance is usually taken out by an employer, a self-employed individual or the trustee of a superannuation fund. Sometimes the benefit is self-insured. The insurance is to cover events which are in the nature of temporary disablement and prevent the member from undertaking income producing activities. The benefit is usually paid periodically while the disablement continues.

4. Salary continuance benefits are not normally payable to compensate the member for the loss of salary due to relatively minor illnesses. For employees, these events are usually covered by sick leave entitlements.

### Treatment of salary continuance benefits for RBL purposes

5. The regular payments are intended to be a direct compensation for salary and not intended to be in the nature of a payment during 'retirement'. Accordingly, for income tax purposes, salary continuance benefits are treated by the recipient as compensation for salary.

6. Thus salary continuance benefits are:

- not counted for RBL purposes, irrespective of the payment period; and
- to be known as 'replacement of income' benefits for RBL purposes.

7. Where a person is in receipt of a salary continuance benefit and, subsequently, a disability superannuation pension commences to be paid, the pension (from the date of commencement) is to be reported for RBL purposes and counts against the recipient's RBL.

**Commissioner of Taxation**
14 July 1999

*Previous draft:*
TD 1999/D20

*Related Rulings/Determinations:*
TD 98/27

*Subject references:*
salary continuance benefits; Reasonable Benefit Limits; temporary disability

*Legislative references:*
SISA 10(1); SISR 1.05(1); SISR 1.06(1); SISR Schedule 1; ITAA36 140C(1); 140ZL(1); 140ZO(2)

*Case references:*

ATO references:
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