



TD 92/189 - Income tax: under an employee share acquisition scheme, an employee is allotted partly paid shares which are subject to a restriction on disposal in terms of subsection 26AAC(15). Several years later, the employee is made redundant and pays the balance of the issue price of the shares so that the restriction on disposal ceases. Is any 'excess' of the market value of the shares (at the time the restriction ceases) over their cost of acquisition treated concessionally as an eligible termination payment?

 This cover sheet is provided for information only. It does not form part of *TD 92/189 - Income tax: under an employee share acquisition scheme, an employee is allotted partly paid shares which are subject to a restriction on disposal in terms of subsection 26AAC(15). Several years later, the employee is made redundant and pays the balance of the issue price of the shares so that the restriction on disposal ceases. Is any 'excess' of the market value of the shares (at the time the restriction ceases) over their cost of acquisition treated concessionally as an eligible termination payment?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 12 November 1992

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: under an employee share acquisition scheme, an employee is allotted partly paid shares which are subject to a restriction on disposal in terms of subsection 26AAC(15). Several years later, the employee is made redundant and pays the balance of the issue price of the shares so that the restriction on disposal ceases. Is any 'excess' of the market value of the shares (at the time the restriction ceases) over their cost of acquisition treated concessionally as an eligible termination payment?

1. No. The 'excess' is assessable as an employee share benefit under subsection 26AAC(5) of the *Income Tax Assessment Act 1936*. There has been no payment or transfer of property as a consequence of the termination of employment. The 'excess' is not an 'eligible termination payment' as defined in subsections 27A(1) and 27A(8) and therefore cannot qualify for concessional treatment as a bona fide redundancy payment in terms of section 27F.

Example:

Shares are allotted to an employee under an employee share acquisition scheme. The issue price is \$0.50 per share with \$0.01 payable on allotment. The employee is prevented from disposing of any shares until they are fully paid.

The rules of the scheme provide that where an employee is retrenched, the employee must pay the balance of \$0.49 per share or forfeit ownership of the shares. The employee is retrenched and pays the balance of \$0.49 per share. As a result, the restriction on disposal of the shares ceases.

The market value of each share at that time is \$3.00. The amount of \$2.50 per share, being the difference between the market value at the time the restriction ceases and the issue price (ie. \$3.00 - \$0.50), is assessable income of the employee under subsection 26AAC(5).

Notes:

(i) It is assumed that a valid election under subsection 26AAC(15A) was not made for the shares.

(ii) The result may be different if, as a consequence of a termination of employment, property (e.g. a parcel of shares) is actually transferred to an employee. Where the circumstances are such that the other prerequisites for the operation of Subdivision AA of Division 2 of Part III of the Act are satisfied, the transfer of shares would constitute an 'eligible termination payment' as defined in that Subdivision (subsections 27A(1),(8)). The income tax liability in respect of the acquisition of those shares would then fall to be determined under Subdivision AA and not section 26AAC (Taxation Ruling IT 2609 at paragraph 24)).

Commissioner of Taxation

12/11/92

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Related Determinations:

Related Rulings: IT 2609

Subject Ref: employee share benefits; eligible termination payments

Legislative Ref: ITAA 26AAC(5), ITAA 26AAC(15), ITAA 26AAC(15A), ITAA 27A(1), ITAA 27A(8), ITAA 27F

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