TD 92/189W - 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 *20 December 2016*

Australian Government
Australian Taxation Office

Taxation Determination
TD 92/189

Notice of Withdrawal

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?

Taxation Determination TD 92/189 is withdrawn with effect from today.

1. TD 92/189 explains that in the circumstances of the described employee share acquisition scheme, the excess of the market value of the shares over their cost of acquisition is not an eligible termination payment. Therefore, the excess does not qualify for concessional treatment as a bona fide redundancy payment under section 27F of the *Income Tax Assessment Act 1936* (ITAA 1936). The excess is instead assessable as an employee share benefit under subsection 26AAC(5) of the ITAA 1936.

2. Sections 26AAC and 27F of the ITAA 1936 have both been repealed. Rules relating to Employee Share Schemes are now contained in Division 83A of the *Income Tax Assessment Act 1997*.

3. TD 92/189 therefore has no ongoing relevance and is withdrawn without replacement.

Commissioner of Taxation
20 December 2016

ATO references

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