



***TD 92/200 - Income tax: for a lump sum or eligible termination payment rebate under section 159SA of the Income Tax Assessment Act 1936 (ITAA), does 'the rate of tax' for a primary producer refer to the notional rate under subsection 12(2) and subsection 12(3) of the Income Tax Rates Act 1986 (ITR)?***

 This cover sheet is provided for information only. It does not form part of *TD 92/200 - Income tax: for a lump sum or eligible termination payment rebate under section 159SA of the Income Tax Assessment Act 1936 (ITAA), does 'the rate of tax' for a primary producer refer to the notional rate under subsection 12(2) and subsection 12(3) of the Income Tax Rates Act 1986 (ITR)?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 17 December 1992

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA 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: for a lump sum or eligible termination payment rebate under section 159SA of the *Income Tax Assessment Act 1936* (ITAA), does 'the rate of tax' for a primary producer refer to the notional rate under subsection 12(2) and subsection 12(3) of the *Income Tax Rates Act 1986* (ITRA)?**

1. Yes.
2. Section 159SA of the ITAA allows a rebate for annual leave, long service leave and eligible termination payments (LSP/ETP rebate) where the taxpayer's rate of tax is greater than the amount specified in the tables under section 159SB of the ITAA.
3. The rate of tax, in most circumstances, is the general rate of tax under subsection 12(1) of the ITRA. If the taxpayer is a primary producer (PP) subject to the averaging provisions under subsection 156(4) and subsection 156(4A) of the ITAA, the rate of tax is the notional rate under subsection 12(2) and subsection 12(3) of the ITRA.
4. The LSP/ETP rebate calculation for a primary producer (A\*) is different to that of a non-primary producer (B\*). The primary production averaging calculation is directly affected by the inclusion of a LSP/ETP amount in taxable income. This effect is offset by the LSP/ETP rebate calculation incorporating the notional rates.
5. Therefore, use of the notional rate instead of the general rate ensures that the LSP/ETP rebate is reduced by the same amount as the average rebate is increased. Alternatively, the LSP/ETP rebate will also reduce proportionately to a complementary tax reduction.
6. The example on page 2 of this Determination illustrates the correct method of calculating the LSP/ETP rebate for a primary producer.

*Example:*

For the 1988-1989 income year, a taxpayer receives primary production income (\$17 880), a non-rebatable eligible termination payment (ETP) (\$196), and a rebatable ETP taxed to a maximum of 12% (\$1 287). The LSP/ETP rebate under section 159SA of the ITAA is calculated as follows:

*A\*. Using Notional Rates (Primary Producer).*

	With <u>Rebatable ETP (\$)</u>	Without <u>Rebatable ETP (\$)</u>	
1. Taxable Income	19 363.00	18 076.00	
2. Tax Assessed	3 761.27	3 388.04	
3. Average Income	7 446.00	7 189.00	
4. Average Rebate	2 297.11	2 127.43	
5. Tax Payable (2. - 4.)	1 464.16	1 260.61	
6. Actual tax payable on rebatable ETP (\$1 464.16 - \$1 260.61)			= \$203.55
7. less: Tax assessed on rebatable ETP (\$1 287 x 12%)			= <u>\$154.44</u>
8. Section 159SA rebate			= \$ 49.11

*B\*. Using General Rates (assuming non-Primary Producer status).*

1. Actual tax assessed (\$1 287 x 29%)	= \$373.23
2. less: Tax assessed on rebatable ETP (\$1 287 x 12%)	= <u>\$154.44</u>
3. Section 159SA rebate	= \$218.79

Note: In the above example;

LSP/ETP rebate:- general rates	\$ 218.79
less: LSP/ETP rebate:- notional rates	<u>\$ 49.11</u>
	\$ 169.68

*Equals*

Average rebate:- income including rebatable ETP	\$2 297.11
less: Average rebate:- income excluding rebatable ETP	<u>\$2 127.43</u>
	\$ 169.68

**Commissioner of Taxation**

17/12/92

FOI INDEX DETAIL: Reference No. I 1213782

Previously issued as Draft TD 92/D198

Related Determinations:

Related Rulings:

Subject Ref: lump sum payments; eligible termination payments; primary producer; rebates

Legislative Ref: ITAA 159SA; ITAA 159SB; ITAA 156(4); ITAA 156(4A); ITRA 12(1); ITRA 12(2); ITRA 12(3)

Case Ref:

ATO Ref: New TD15

ISSN 1038 - 8982