

TD 93/14 - Income tax: can a payment in lieu of notice, on termination of employment, be treated as a bona fide redundancy payment?

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⚠ This document has changed over time. This is a consolidated version of the ruling which was published on *28 January 1993*



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 Rulings TR 92/1 and TR 97/16 explain when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, 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 a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: can a payment in lieu of notice, on termination of employment, be treated as a bona fide redundancy payment?

1. Yes. A payment in lieu of notice forms part of a bona fide redundancy payment, in terms of section 27F of the *Income Tax Assessment Act 1936* if the following conditions exist:

- (a) the payment is made because of the dismissal of the taxpayer;
- (b) the dismissal is not for personal or disciplinary reasons but is made because the taxpayer's position became redundant (i.e. no other person would be employed to perform the functions of the taxpayer);
- (c) the payment relates to a termination occurring before a specified retirement age or before the taxpayer's 65th birthday, whichever occurs first;
- (d) the payment is more than could reasonably be expected if the taxpayer voluntarily resigned or retired in other circumstances;
- (e) there is, at the termination time, no agreement between the taxpayer and the employer, or the employer and another person, to employ the taxpayer after the termination time; and
- (f) if the Commissioner is satisfied that the employer and taxpayer were not dealing with each other at arm's length, the amount of the eligible termination payment does not exceed the amount that could reasonably be expected to have been paid if the parties had been dealing at arm's length.

2. If a situation of bona fide redundancy exists, only that part of the payment which is additional to what the taxpayer would otherwise have received as a result of voluntary retirement is a concessional component.

Example 1

Bob is to be dismissed because there is no longer enough work to keep him on.

You are required, as Bob's employer, to pay him 1 week's wages (\$500) as part of his employment agreement. This amount would also have been paid had he voluntarily resigned. You are also paying an extra 2 weeks' wages (\$1 000) in lieu of giving him two weeks notice. This is a bona fide redundancy.

The concessional component is \$1 000 (i.e. the amount over and above what Bob would have received if he had resigned rather than being made redundant).

The other \$500 will be split into a pre-July 83 component and a post-June 83 component 'untaxed element' depending on when Bob commenced working for you.

Example 2

Mary's employment is terminated immediately after you, as her employer, discover that she has been taking stock for her own use. You pay her 1 weeks wages in lieu of notice.

The termination of employment has not occurred because the position became redundant, therefore the payment is not a bona fide redundancy payment and is not subject to concessional tax treatment. However the payment is still an eligible termination payment and thus split into a pre-July 83 component and post-June 83 component.

Commissioner of Taxation28/1/93

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[Related Determinations:](#)[Related Rulings:](#) IT 2286; IT 2490; IT 2620[Subject Ref:](#) payment in lieu of notice; bona fide redundancy payment[Legislative Ref:](#) ITAA 27F[Case Ref:](#)[ATO Ref:](#) PNR T95 Part 1

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