TD 93/192 - Income tax: does employment, for the purposes of subsection 27A(1), include time spent as a partner for the purpose of calculation of the eligible service period in relation to an eligible termination payment made in consequence of the termination of a person's employment?

This cover sheet is provided for information only. It does not form part of *TD 93/192 - Income tax: does employment, for the purposes of subsection 27A(1), include time spent as a partner for the purpose of calculation of the eligible service period in relation to an eligible termination payment made in consequence of the termination of a person's employment?*

This document has changed over time. This is a consolidated version of the ruling which was published on *7 October 1993*

Australian Taxation Office

Taxation Determination TD 93/192

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, 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: does employment, for the purposes of subsection 27A(1), include time spent as a partner for the purpose of calculation of the eligible service period in relation to an eligible termination payment made in consequence of the termination of a person's employment?

1. No. It only refers to service as an employee. The same person cannot occupy the position of being both master and servant, employer and employees. See *Ellis v. Joseph Ellis & Co* [1905] 1 K.B. 324.

Example:

Mr X joined an accounting firm, AB Partners as a partner, on 1 January 1968. On 1 January 1980 AB Partners incorporated as a service company, and set up a superannuation fund. X became an employee of the service company and joined the superannuation fund. He retired on 31 December 1990 and received an eligible termination payment from the superannuation fund. His eligible service period commences on 1 January 1980 being the date on which he became an employee of the service company and joined the superannuation fund. His time as a partner does not form part of the eligible service period.

Commissioner of Taxation
7/10/93

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Related Rulings: IT 2168
Subject Ref: eligible service period; eligible termination payment
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