TD 93/3 - Income tax: is a payment, being a partial commutation of weekly compensation payments, assessable income?

This cover sheet is provided for information only. It does not form part of *TD 93/3 - Income tax: is a payment, being a partial commutation of weekly compensation payments, assessable income?*

This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

This document has changed over time. This is a consolidated version of the ruling which was published on *23 November 2016*

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).

*[**Note:** This is a consolidated version of this document. Refer to the Legal Database (https://www.ato.gov.au/law) to check its currency and to view the details of all changes.]*

Taxation Determination

Income tax: is a payment, being a partial commutation of weekly compensation payments, assessable income?

1. Yes. A lump sum payment which is a partial commutation of weekly compensation payments is assessable under subsection 25(1) of the *Income Tax Assessment Act 1936* (the ITAA).

2. A number of Compensation Acts enable an injured worker to partially commute weekly compensation payments into a lump sum. Under the different compensation legislation, the decision whether a worker is eligible to commute weekly payments may be left to the discretion of a Board or Court or at the option of the employer. The legislation may specify conditions that a Board or Court should have regard to in making a determination. For instance, whether the worker has reached a certain age, or has been assessed as having an incapacity that is permanent. Other considerations may be the occupation of the worker at the time of the occurrence of the injury and/ or the worker's diminished ability to compete in an open labour market.

3. Commutation of the payments may only be partial, that is, payment of a lesser amount of compensation in a weekly form continues, and for a specified period of time. Payments under section 115 of the *Accident Compensation Act 1985* (Vic) and section 51(a) of the *Workers Compensation Act 1987* (NSW) are of this nature. For example, under section 115 of the Victorian Act, an injured worker who receives weekly compensation payments under either section 93 or 94 is entitled to apply for commutation of up to 30% of the weekly payments for a period of up to 5 years if he or she is aged 55 years or more and has an incapacity that has been assessed as permanent.

4. The weekly payments are assessable income because they are paid as compensation for loss of income or salary, or because of their regular receipt and their nature as a supplement to income, etc (FC of T v. Inkster 89 ATC 5142; 20 DTR 1516). We consider that a lump sum payment, which is a partial commutation of weekly payments, does not change its character of compensation for loss of income. Effectively, the payment is an advance of future weekly payments. Consequently, it continues to be assessable under subsection 25(1).

5. Lump sum payments in partial commutation of rights to weekly payments can be distinguished from payments received as a redemption of all the injured worker's rights under the Compensation Act. Such payments are of a capital nature and so are not included in assessable income. Nor are these payments assessable under the capital gains provisions of the ITAA. (See subsection 160ZB(1).)

6. [Omitted.]

7. This Office previously advised that partial commutation payments under section 115 of the Victorian Act are not assessable income. Where workers entered into agreements prior to 1 July 1992 to redeem their weekly compensation payments and based their decision on that previous advice, we will stand by that advice and treat those payments as non-assessable capital payments. This also applies to workers who, before 1 July 1992, lodged appeals against a decision not to approve their application for redemption. However, where an application or offer of redemption was made prior to 1 July 1992 but the agreement to redeem was not made until after that date, the payment will be treated as assessable income.

8. Similar advice had not been provided in relation to payments under the New South Wales Act. This Determination therefore applies to commutation payments made under that Act both before and after the date of this Determination.

Commissioner of Taxation
21/ 01/ 93

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Related Determinations:
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