


***TD 93/D105 - Income tax: if a company ceases carrying on a business which has been transferred to an associated entity, will a payment made by that company to a former employee be an eligible termination payment as defined in subsection 27A(1) of the Income Tax Assessment Act 1936 ?***

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This document has been finalised by [TD 93/140](#).

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

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## Draft Taxation Determination

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**Income tax: if a company ceases carrying on a business which has been transferred to an associated entity, will a payment made by that company to a former employee be an eligible termination payment as defined in subsection 27A(1) of the *Income Tax Assessment Act 1936* ?**

1. Yes, provided the payment is, in fact, made in consequence of the termination of employment of the former employee, and is not excluded by the provisions of subparagraphs 27A(1)(a)(i) to (v) of the definition of eligible termination payment.

2. Taxation Ruling IT 2152 dealt with termination of employment as it related to the provisions of former paragraph 26(d). Paragraph 9 of IT 2152 included the statement:

'Where a company or other employer ceases carrying on a business which has been transferred to an associated entity, it will be accepted that the employees of the company have had their employment terminated.'

3. The relevant wording of the former paragraph 26(d), as it relates to the above statement, is similar to that in the definition of eligible termination payment in subsection 27A(1). Therefore the above statement applies equally to the eligible termination payment provisions.

*Example:*

*Ms. A, has been employed by X Pty. Ltd. as a salesperson for several years. X Pty. Ltd. is a subsidiary of Z Pty. Ltd. Z Pty. Ltd. has decided to disband the sales division of X Pty. Ltd. and transfer the employees to Z Pty. Ltd. In appreciation of Ms. A's prior service X Pty. Ltd. makes a payment to her of \$10,000.*

*The \$10,000 is an ETP.*

**Commissioner of Taxation**  
29/04/93

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FOI INDEX DETAIL: Reference No.

Related Determinations:

Related Rulings: IT 2152

Subject Ref: eligible termination payments

Legislative Ref: ITAA 26(d); ITAA 27A(1)

Case Ref:

ATO Ref: CNN J 36/355/4 Vol. 1

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