


TD 93/D179 - Income tax: is a payment in lieu of notice on termination of employment an eligible termination payment under subsection 27A(1) of the Income Tax Assessment Act 1936?

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This document has been finalised by TD 94/62.

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Draft Taxation Determination

Income tax: is a payment in lieu of notice on termination of employment an eligible termination payment under subsection 27A(1) of the *Income Tax Assessment Act 1936*?

1. Yes. We consider that a payment in lieu of notice is an eligible termination payment as it is made 'in consequence of' termination of employment in terms of paragraph 27A(1)(a).

Note: If the termination of employment is by reason of bona fide redundancy or under an approved early retirement scheme the payment in lieu will be treated as a concessional component. In any other situation, the payment in lieu would need to be apportioned into pre July 83 and post June 83 components depending upon the employee's period of service.

Examples:

1. *An employer dismisses an employee without giving notice. Under the particular award a payment in lieu of notice must be made. The amount received as a payment in lieu is made as a consequence of termination of employment and is therefore an eligible termination payment.*
2. *An employer is required to give notice of termination of employment to an employee they will dismiss. When the period of notice ends, the employment will be terminated. During the period of notice the employee will continue to perform his or her duties. The remuneration received during this period is salary or wage income.*

Commissioner of Taxation

15/7/93

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