


TD 94/D70 - Income tax: if a taxpayer wants to roll-over some or all of an eligible termination payment (ETP) to a roll-over fund after 30 June 1994, does the payer have to pay the amount directly to the roll-over fund for it to be an effective roll-over for the purposes of subsection 27A(13) of the Income Tax Assessment Act 1936 ?

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This document has been finalised by TD 96/36.

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Draft Taxation Determination

Income tax: if a taxpayer wants to roll-over some or all of an eligible termination payment (ETP) to a roll-over fund after 30 June 1994, does the payer have to pay the amount directly to the roll-over fund for it to be an effective roll-over for the purposes of subsection 27A(13) of the *Income Tax Assessment Act 1936*?

1. Yes, unless the ETP is paid from the taxpayer's employer and the employer refuses to wait for the taxpayer to make an election before making the payment.
2. From 1 July 1994, if a taxpayer wants to roll-over some or all of an ETP, the amount must be paid to the roll-over fund 'immediately after' the payment is made.
3. Therefore, if a taxpayer is entitled to a payment from a superannuation fund and wants to roll-over some or all of the benefit to a roll-over fund, the payment will only be accepted as being rolled over if the taxpayer gives an election to the fund before the payment is made **and** the superannuation fund pays the amount directly to the roll-over fund(s).
4. Likewise, if a taxpayer has an amount in a roll-over fund and wants to roll-over some or all of it to another roll-over fund, any election must be given to the current roll-over fund before the payment is made. The roll-over fund must then pay the amount(s) directly to the new roll-over fund(s) for it to qualify as a roll-over.
5. However, if the ETP is paid from the taxpayer's employer, the employer is under no legal obligation to hold the benefit until the taxpayer makes an election. Consequently, if the employer refuses to wait for a taxpayer to make an election before making the payment, the payment will be accepted as being rolled over immediately if, within 5 working days from the date of the payment, the taxpayer makes an election to roll-over some or all of the payment **and** pays the relevant amount to the roll-over fund(s).
6. This period may be extended in special circumstances which are beyond the taxpayer's control. For example, the period may be extended if during the whole or a substantial part of the period:
 - either the taxpayer or a dependant of the taxpayer was seriously ill;
 - the taxpayer had to go on an unavoidable overseas business trip; or
 - the taxpayer's place of residence was remote from available roll-over facilities.
7. However, the period will not be extended if it is clear the taxpayer had no intention of preserving the payment. For example, if the taxpayer used the payment to finance a particular

venture and after coming into funds from another source seeks to roll-over an amount equal to the whole or a part of the original ETP.

8. An application for extension should be sent as soon as practicable to the Taxation Office at which the taxpayer normally lodges his or her tax return explaining the circumstances that make the period unreasonable.

Example 1

*Jarrold is dismissed on Friday 21 October 1994 and, at the time he is dismissed, his employer pays him an ETP. Jarrold makes an election to roll-over all of the payment **and** pays the relevant amount to the roll-over fund on 27 October 1994. In this case the roll-over is effective because the ETP was paid to the roll-over fund within 5 working days .*

Example 2

*Marika receives a payment from her superannuation fund on Friday 21 October 1994. She makes an election to roll-over all of the payment **and** pays the relevant amount to the roll-over fund on 27 October 1994. In this case the roll-over is **not** effective.*

Commissioner of Taxation

23/6/94

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