TD 98/D7 - Income tax: what is the approved form and manner of lodgment for an election to roll-over an eligible termination payment?

This cover sheet is provided for information only. It does not form part of *TD 98/D7 - Income tax: what is the approved form and manner of lodgment for an election to roll-over an eligible termination payment?*

This document has been finalised by TD 98/26.

Australian Taxation Office

Taxation Determination TD 98/D7

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.

Draft Taxation Determination

Income tax: what is the approved form and manner of lodgment for an election to roll-over an eligible termination payment?

1. Subsection 27D(1) of the *Income Tax Assessment Act 1936* (ITAA) provides that a taxpayer may make an election in respect of a qualifying eligible termination payment. A qualifying eligible termination payment is a payment immediately paid to a roll-over institution in accordance with subsection 27A(12). Where an election is made in relation to a qualifying eligible termination payment the amount is regarded as 'rolled-over' under paragraph 27A(13)(a).

2. Subsection 27D(3) states that an election shall:

   (a) be in a form approved by the Commissioner; and

   (b) be lodged with the Commissioner within such time, and in such a manner, as is prescribed.

Form approved by the Commissioner

3. Where a taxpayer, or an agent of the taxpayer, gives instructions satisfying the requirements of regulation 99E of the Income Tax Regulations to a payer to roll-over all or part of an eligible termination payment the instructions are an approved form of election under subsection 27D(3).

Manner of lodgment prescribed

4. The Commissioner does not prescribe the manner in which an election must be made. However, a taxpayer who gives instructions of the kind mentioned in paragraph 3 is required, under regulation 99I, to keep a copy of the instructions for 5 years from the date they were given. A taxpayer is not required to provide a copy of the instructions to the Commissioner except when requested for audit purposes.

Effect of election

5. The rolled-over amount is not included in the taxpayer's assessable income (sections 27AC, 27B and 27C). If payment is not made to a roll-over institution as instructed, and accordingly no 'qualifying eligible termination payment' is made under subsection 27A(12), the taxpayer's election ceases to have effect.

Example

6. Kim is changing jobs and instructs her employer sponsored superannuation fund to roll-over her lump sum benefit to a new superannuation provider. Payment is duly made to the new superannuation provider. Kim must keep a record of the instructions given for 5 years. The instructions represent Kim's election to roll-over an eligible termination payment and the payment

to the new superannuation provider is taken to have been applied in accordance with the election. The amount of the lump sum rolled-over is not included in Kim's assessable income. Kim is not required to lodge her election, or any documentation regarding the rolled-over amount, in her income tax return.

Your comments

7. If you want to comment on this draft Determination, please send your comments by 24 July 1998 to:

Contact Officer: Dean Conway

Telephone: (02) 6216 1692

Facsimile: (02) 6216 2244

Address: Mr Dean Conway
Superannuation Program - Current Policy
Australian Taxation Office
PO Box 900
Civic Square ACT 2608.

Commissioner of Taxation
24 June 1998

FOI INDEX DETAIL: Reference No.
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Related Rulings:
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