


IT 2021 - Retrenchment of employees - subsequent employment on casual basis

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

TAXATION RULING NO. IT 2021

RETRENCHMENT OF EMPLOYEES - SUBSEQUENT EMPLOYMENT ON
CASUAL BASIS

F.O.I. EMBARGO: May be released

REF

H.O. REF: 4 J249/6 P8 F254

DATE OF EFFECT:

B.O. REF: VJ 138/1 P7

DATE ORIG. MEMO ISSUED: 24.02.83

F.O.I. INDEX DETAIL

REFERENCE NO:

SUBJECT REFS:

LEGISLAT. REFS:

I 1102818

RETIRING ALLOWANCES

s.26(d)

EMPLOYMENT STATUS CHANGE

LUMP SUM PAYMENTS

PREAMBLE

In the current economic climate a number of companies have found it necessary to retrench employees in order to maintain the companies' profitability. Where the retrenchment constitutes retirement or termination in terms of section 26(d), any lump sums payable to employees on retrenchment are assessable only to the extent of 5%.

2. It will, of course, be a question in each case whether there has been a retirement or termination within the meaning of section 26(d). Cases recently brought to the attention of this office illustrate the problem.

RULING

3. In one case the employees had their hours of work reduced and became part-time employees. They did not receive any payment on change of status from full-time employees to part-time employees and continued to retain all the benefits to which full-time employees were normally entitled. Clearly there was no retirement or termination in this case and, had any amount been paid on the change of status, it would not have attracted the operation of section 26(d).

4. In the other case the employees who were retrenched were offered the possibility of work on a casual basis. Their names were placed on a list of casual employees available to be employed by the particular employer. On retrenchment the employees were paid their entitlement from the superannuation fund plus an additional payment from the employer. In the event of the employees being subsequently engaged on a casual basis they were no longer entitled to the benefits available to full-time employees, e.g. annual leave, sick leave, long service, etc. In these circumstances it has been accepted that the retrenchment constituted a retirement or termination in terms of section 26(d) and only 5% of the lump sum on retrenchment is assessable income.

COMMISSIONER OF TAXATION
25 February 1983

