

IT 221 - Gratuity on termination of employment - application of s26(d)

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TAXATION RULING NO. IT 221

GRATUITY ON TERMINATION OF EMPLOYMENT - APPLICATION OF
s26(d)

F.O.I. EMBARGO: Edited for FOI purposes

REF

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REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

I 1103098 LUMP SUM PAYMENT 26(d)
TERMINATION OF
EMPLOYMENT
DEFERRED GRATUITIES

PREAMBLE

The application of section 26(d) to lump sum payments payable to certain staff members of the (the Institute) in respect of the completion of term contracts of employment has been considered.

FACTS

2. Staff members concerned are tutors, senior tutors and staff of lecturer level and above engaged in teaching, research, library or counselling duties and employed as "limited term academic staff". Staff members so employed are employed on this basis for an initial contract period of three years. At the expiration of this period, these staff members may either take permanent positions at the Institute, undertake further limited term contracts or leave the service of the Institute.

3. The "Conditions of Employment Applicable to Limited Term Academic Staff Appointments" provide that "a gratuity, up to 15% of total salary earned normally will be payable (in lieu of superannuation and repatriation benefits) to a member of staff employed on a limited term contract at the completion of the period of the contract agreement".

4. It was necessary to consider the effect of section 26(d) on the payment of the gratuity in the following situations:-

- (i) where a staff member completes his contract and leaves the service of the Institute
- (ii) where a staff member completes his contract and accepts a permanent position at the Institute
- (iii) where a staff member completes one contract, accepts a further limited term contract with the Institute and is paid a gratuity on completion of the first contract
- (iv) where a staff member completes a contract and

accepts a further offer of limited term contract but asks for the payment of the gratuity on his first contract to be deferred until completion of the second contract

- (v) in the circumstances similar to (iv) but where a staff member on completing two contracts accepts a permanent appointment
- (vi) where a staff member, having completed a contract, accepts at some time in the future, a position with the Institute on either a part-time or full-time basis.

RULING

5. In the situations outlined in (i) and (vi) above, where a staff member enters into a contract for employment for a specified term and severs his employment on the completion of that term in the sense that he does not enter into a new contract for re-employment following on from the original term, any gratuity paid to him in respect of the term of the contract would fall within the terms of section 26(d) with the result that 5% of the gratuity would be included in the assessable income of the income year in which it is received.

6. If a staff member were to negotiate a further period of employment following on from the completion of his first contract and had accepted payment of a gratuity in respect of, and at the end of, the first contract term (situations (ii) and (iii) above), the amount of the gratuity would be assessable in full on the basis that it would not be received in consequence of retirement from, or termination of, employment since there would have been no such retirement or termination.

7. However, where a staff member arranges to have payment of a gratuity in respect of a term of contract employment deferred until after completion of the term of another contract (situation (iv)), it is considered that the gratuity should be regarded as derived at the time that it is in fact paid. This is in keeping with the practice, well established by precedent, of treating income in the nature of salary or wages as being derived at the time of payment. This office has consistently followed this principle as for example, in the case where wages in respect of long service leave are paid in advance, or where workers' compensation or arrears of wages, attributable to a number of years are paid in one income year. It is considered that section 19 would not apply to a gratuity payment of the kind presently under consideration, unless some action is taken, at the time when the amounts would normally be paid, that can be construed as actual payment. Consequently, in the event that payment of the first term gratuity is deferred until employment is severed on completion of a second term, the gratuities paid in respect of both terms would, provided they were paid in a lump sum, fall within section 26(d), assessable to the extent of 5%.

8. In the situation outlined in (v) above, even though payment of the gratuity has been deferred, the situation is not unlike that in (ii), so that the amount of the gratuity would be

assessable in full.

9.

COMMISSIONER OF TAXATION