

IT 2256 - Income tax : assessment of eligible termination payments - eligible service period

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TAXATION RULING NO. IT 2256

INCOME TAX : ASSESSMENT OF ELIGIBLE TERMINATION
PAYMENTS - ELIGIBLE SERVICE PERIOD

F.O.I. EMBARGO: May be released

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I 1205948 ELIGIBLE TERMINATION 27A
 PAYMENTS
 ELIGIBLE SERVICE PERIOD

OTHER RULINGS ON TOPIC : IT 2157, IT 2168, IT 2255

PREAMBLE This office was asked recently to provide advice regarding the determination of the eligible service periods in relation to eligible termination payments made to two retiring government employees. The question was raised whether prior service with another government employer should be taken into account in calculating the eligible service periods.

FACTS 2. The facts in both cases were essentially the same. Some years ago (and before 1 July 1983), after having been employed by one government employer (employer A), each of the taxpayers concerned accepted an appointment with another government employer (employer B). Each appointment was the subject of an agreement by employer B to pay, on retirement, an additional amount that, together with other entitlements, would provide total retirement benefits equal to those which would have been available on retirement from the earlier employment with employer A. The agreements reflected the fact that, because it was not possible to transfer accrued superannuation entitlements to employer B's superannuation scheme, the taxpayers stood to lose significant superannuation benefits.

3. A condition of each agreement was that the taxpayer pay to employer B's Treasury the full amount of the superannuation benefit received on withdrawal from employer A's superannuation fund. This amount was then paid into a special trust account, which qualifies as a superannuation fund in terms of paragraph (b) of the definition of "superannuation fund" in sub-section 27A(1) of the Income Tax Assessment Act.

4. The taxpayers concerned recently retired from their employment and each received the following eligible termination payments -

- the refund, with interest, of the amount received from employer A and paid into the special trust

account;

- the refund, with interest, of contributions made under employer B's superannuation scheme; and
- the agreed additional amount paid by employer B.

In addition, one of the taxpayers received a refund, with interest, of further contributions made by the taxpayer to the special trust account during the period of service with employer B.

RULING Special trust account payment

5. Paragraphs 15 to 17 of Ruling IT 2168 deal with the determination of the eligible service period in relation to an eligible termination payment from a superannuation fund that is, at least in part, attributable to a payment received upon termination of an earlier employment and preserved by transfer to the fund making the eligible termination payment. In those circumstances, the eligible service period is to include the period of the earlier employment. Applying that principle to each of the cases at hand, the eligible service period in relation to the payment from the special trust account (including the amount generated by the further contributions made during the second period of employment) included not only the period of service with employer B (ending on the date the payment was made) but also the period of service with employer A - the superannuation benefits received on termination of the earlier employment having been fully preserved.

Employer B's superannuation fund payment

6. Paragraph 18 of Ruling IT 2168 explains that the eligible service period in relation to a commutation payment from an employer-sponsored superannuation fund is normally the period commencing on the date the member's employment commenced and ending on the date the eligible termination payment is made. As in each case the particular eligible termination payment represented the commutation of a pension otherwise payable under Employer B's superannuation scheme, the eligible service period in relation to each payment was accepted as the period from the date on which the employee commenced employment with employer B to the date of payment.

Additional payment

7. The manner of calculating the eligible service period where an eligible termination payment is made in consequence of the termination of a person's employment is discussed at paragraphs 4 to 7 of Ruling IT 2168. In terms of paragraph 4, it is to be taken that the eligible service period is the person's total period of most recent continuous service with the employer making the payment, unless there is evidence that the payment was made in recognition of a different period of employment. Having regard to the circumstances surrounding the payment of the additional amount by employer B - which, in

ensuring that the employee suffered no detriment from the change of employment, was made in recognition of both the period of service with employer B and the period of service with employer A - it was accepted that the eligible service period in relation to the additional payment made to each taxpayer included the two periods of service and ended on the date of retirement from service with employer B.

8. Factors relevant to reaching this decision were -

- the agreement to pay the additional amount was made at the time of the change of employment and was essentially a condition of that change;
- the superannuation benefits received on termination of employment with employer A were fully preserved; and
- the additional amount was determined by reference to the superannuation benefits that accrued over both periods of service and the benefits that would have accrued in respect of the earlier period of service if it had continued to the date of retirement.

COMMISSIONER OF TAXATION
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