



IT 246 - Seagoing employees: lump sum payments on termination of employment

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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in [TR 2006/10](#) provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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 246

SEAGOING EMPLOYEES: LUMP SUM PAYMENTS ON TERMINATION
OF EMPLOYMENT

F.O.I. EMBARGO: May be released

REF

H.O. REF: 75/3713 F6

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F.O.I. INDEX DETAIL

REFERENCE NO: SUBJECT REFS: LEGISLAT. REFS:

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|-----------|--------------------|-------|
| I 1102004 | LUMP SUM PAYMENTS | 26(d) |
| | TERMINATION OF | 26(e) |
| | EMPLOYMENT | |
| | MARITIME INDUSTRY | |
| | SEAGOING AWARD | |
| | SEAMENS ENGAGEMENT | |
| | SYSTEM | |

FACTS

Consideration has been given to the treatment, for income tax purposes, of lump sum payments made to seagoing employees on termination of employment.

2. Payments to which seagoing employees are entitled upon termination of employment are set out in various provisions of the "Maritime Industry Seagoing Award 1973". Under that Award an employee, which term includes by definition an officer, upon termination of employment with a particular employer is to be paid for all intervals of leave to which he is entitled at date of termination (Clause 9(i)). Further, an employee whose employment is to be terminated is entitled to be paid an amount in lieu of notice (Clause 24) and to severance pay where service is terminated because of the decommissioning and sale off the coast of a vessel (Clause 37).

3. Upon expiry of leave accrued up to the date of termination of service with a particular employer, a seaman becomes eligible for registration for further employment under the Seamen's Engagement System operated by the Department of Transport. The Award provides for payment, by an employer's representative in each port, of attendance money to registered seamen who are awaiting re-employment. It should be noted, however, that the Engagement System, established under Schedule VIII of the 1973 Award, does not extend to officers. It is understood that officers are employed on a company basis, transfer from ship to ship as required by the company, have their long service leave and superannuation entitlements based on service to the company and, upon termination of their service, have to make personal application to another company for further employment.

RULING

4. Where an employer terminates the employment of a Deck or Engineer Officer, any amount paid in a lump sum to that

officer under Clauses 9, 24 or 37 of the "Maritime Industry Seagoing Award 1973" would be a payment "in consequence of retirement from, or the termination of, any office or employment" as envisaged in section 26(d) of the Income Tax Assessment Act. Accordingly, five per centum only of such an amount would be included in the officer's assessable income.

5. However pro rata payments in lieu of leave and termination entitlements paid at the end of a particular engagement in accordance with the Award to employees who are eligible for registration for further employment under the Engagement System would generally constitute income assessable in full on the basis that there has been no termination of employment from the industry. Such payments are a particular feature of the industry rather than an allowance on termination of employment and arise out of the nature of a seaman's employment within the shipping industry, ie: a seaman may serve successively a number of employers and in between engagements would be entitled to attendance money.

6. The position would be different, however, if a seaman's service with an employer were terminated and he immediately left the industry on a permanent basis. This would constitute a retirement from, or termination of, employment within the meaning of section 26(d). In these circumstances, amounts paid to him in a lump sum as a pro rata payment in lieu of leave and as payments to which he would be entitled under Clauses 24 and 37 of the Award would be assessable to the extent of five per centum only in accordance with the provisions of that section.

7. It should be noted that under Clause 4 the 1973 Award is to remain in force for a period of two years from 4 May 1973. Should the clauses of that Award be amended or should the conditions of employment of officers be varied, the above advice may need to be reviewed.

COMMISSIONER OF TAXATION