TD 98/26 - Income tax: what is the approved form and manner of lodgment for an election to roll-over an eligible termination payment?

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Taxation Determination

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

Preamble

The number, subject heading, date of effect and paragraphs 1 to 5 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.

Date of effect

This determination applies to the 1998-1999 and subsequent financial years.

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 and the amount is included in assessable income.

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.

Commissioner of Taxation
25 November 1998

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