


TR 2003/13A1 - Addendum - Income tax: eligible termination payments (ETP): payments made in consequence of the termination of any employment: meaning of the phrase 'in consequence of'

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Addendum

Taxation Ruling

Income tax: eligible termination payments (ETP):
payments made in consequence of the termination of
any employment: meaning of the phrase 'in
consequence of'

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Ruling TR 2003/13 to update legislative references and references to Taxation Rulings.

TR 2003/13 is amended as follows:

1. Title

Omit 'eligible'; substitute 'employment'.

2. Paragraph 1

Omit 'Subdivisions A and AA of Division 2 of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936); substitute 'Subdivision 82-C of the *Income Tax Assessment 1997* (ITAA 1997)'.

3. Paragraph 2

- (a) In the first bullet point, omit 'eligible termination payment pursuant to paragraph (a) of the definition of 'eligible termination payment' in subsection 27A(1) of the ITAA 1936'; substitute 'employment termination payment under subsection 82-130(1) of the ITAA 1997'.
- (b) In the second bullet point, omit 'eligible termination payment pursuant to paragraph (a) of the definition of 'eligible termination payment' in subsection 27A(1) of the ITAA 1936'; substitute 'employment termination payment under subsection 82-130(1) of the ITAA 1997'.
- (c) In the third bullet point, omit 'payment pursuant to section 27G of ITAA 1936'; substitute 'segment of an employment termination payment under section 82-150 of the ITAA 1997'.
- (d) In the fourth bullet point, omit 'eligible termination payment pursuant to paragraph (a) of the definition of 'eligible termination payment' in subsection 27A(1) of the ITAA 1936'; substitute 'employment termination payment under subsection 82-130(1) of the ITAA 1997'.

4. Paragraph 4

Omit the heading and paragraph.

5. Paragraph 5

- (a) Omit 'ITAA 1936'; substitute 'ITAA 1997'.
- (b) Omit the second sentence; substitute 'However, those words appeared in the former provisions of the ITAA 1936 and have been interpreted by the courts in that context. The phrase 'in consequence of' in the former provisions conveys the same idea as in Division 82 of the ITAA 1997, and accordingly the consideration of the phrase by the courts in the context of the former provisions is also applicable to the interpretation of the phrase in Division 82 of the ITAA 1997.'
- (c) In the third sentence:
 - omit 'made in respect of'; substitute 'received by'
 - omit 'the employment of the taxpayer'; substitute 'the taxpayer's employment'
 - omit 'made to'; substitute 'received by'.

6. Paragraph 6

Omit 'made'; substitute 'received'.

7. Paragraph 7

Omit 'made'; substitute 'received'.

8. Paragraph 8

Omit 'made'; substitute 'received'.

9. Date of effect

Omit the paragraph; substitute:

9. This Ruling applies to income years commencing both before and after its date of issue. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

10. Paragraph 10

- (a) In the heading, omit 'any termination of employment'; substitute 'the termination of a taxpayer's employment'.
- (b) Omit the paragraph; substitute:

10. Division 82 of the ITAA 1997 contains the substantive rules governing the taxation of employment termination payments (ETPs). The term 'employment

termination payment', as defined in section 82-130 of the ITAA 1997, includes any payment made in respect of a taxpayer 'in consequence of the termination of their employment', other than certain specified payments. Common examples of ETPs include golden handshakes, contractual termination payments and payments for wrongful dismissal. However, ETPs do not include other termination payments such as unused annual or long service leave payments, redundancy payments, early retirement scheme payments or foreign termination payments.^{1A}

11. Paragraph 11

Insert 'in the former provision' before 'has'.

12. Paragraph 12

In the third sentence, omit 'section'; substitute 'former paragraph'.

13. Paragraph 22

- (a) In the first sentence, insert 'also' before 'considered'.
- (b) In the first sentence, omit 'more recently'.

14. Paragraph 32

In the first sentence, omit '*Raymond Joseph*'.

15. Paragraph 33

- (a) In the heading, omit 'payments'; substitute 'segments of ETP'.
- (b) Omit the paragraph; substitute:

33. An ETP will include an invalidity segment within the meaning of section 82-150 of the ITAA 1997 if: the payment was made to a person because he or she stops being 'gainfully employed'; the person stopped being gainfully employed because he or she suffered from ill-health (whether physical or mental); the 'gainful employment' stopped before the person's 'last retirement day'; and two legally qualified medical practitioners have certified that, because of the ill-health, it is unlikely that the person can ever be gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training.

16. Paragraph 34

- (a) In the first sentence, omit 'is'; substitute 'was'.
- (b) In the first sentence, insert 'former' before 'section 27G'.
- (c) In the first sentence, insert 'of the ITAA 1936 (the predecessor to section 82-150 of the ITAA 1997)' after 'section 27G'.

^{1A} Section 82-135 of the *Income Tax Assessment Act 1936*.

(d) In the third sentence, insert 'former' before 'section 27G'.

17. Paragraph 35

In the second sentence, insert 'former' before 'section 27G'.

18. Paragraph 38

In the second sentence, omit 'the Jacob J'; substitute 'Jacobs J's'.

19. Paragraph 46

In the first sentence, omit 'his recent decision in *Deborah Odile*'.

20. Paragraphs 49 to 66

Omit the paragraphs and headings.

21. Detailed contents list

Omit the table; substitute:

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22. Related Rulings/Determinations

Omit;

TR 92/20; TR 96/13; IT 243; IT 2060

Insert:

TR 2006/10

23. Subject references

Omit 'eligible'; substitute 'employment'.

24. Legislative references

Omit:

- ITAA 1936 26(d)
- ITAA 1936 27A(1)
- ITAA 1936 27G
- ITAA 1936 Div 2 Pt III A
- ITAA 1936 Div 2 Pt III AA
- ITAA 1936 159SJ
- ITAA 1936 159SM

Insert:

- ITAA 1997 82-130
- ITAA 1997 82-150

25. Case references

Omit 'Deborah Odile' and 'Raymond Joseph'.

This Addendum applies on and from 22 March 2017.

Commissioner of Taxation
22 March 2017

ATO references

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