



TAXATION OF BENEFIT PAYMENTS

Refer to the 2005 Deed Glossary for Defined Terms

This operational instruction informs the Scheme Agent of Australian Taxation Office (ATO) determinations on the treatment of certain Benefit payments for PAYG purposes. A Scheme Agent is expected to be fully aware of how Benefit payments are to be treated and must keep up-to-date with ATO requirements.

WorkCover will advise the Scheme Agent when it becomes aware of changes to ATO policies specifically relating to Workers Compensation payments.

This operational instruction is designed to draw a Scheme Agent's attention to issues. It is not taxation advice and does not exempt a Scheme Agent from examining the applicable taxation guidelines and rulings to determine if they apply in the particular circumstances of a Benefit payment.

Payments to dependent children

Taxation determination 92/133 outlines the treatment of weekly compensation to children of a deceased Worker under the *Commonwealth Employees Rehabilitation and Compensation Act 1988*. The ruling states that periodic payments made under other accident or compensation legislation to dependent children of deceased persons are also considered to be a pension and taxed at normal rates.

Accordingly, a Scheme Agent should ensure that all payments of weekly Benefits in respect of dependent children pursuant to sections 25, 26 and 31 of the 1987 Act are taxed at normal PAYG rates, rather than the higher penalty rates that can apply to other types of income of taxpayers under 18 years of age unless the child is a non resident when the PAYG rates applying to non residents is to apply.

Payments to dependents are subject to normal PAYG taxation requirements including obtaining a Tax File Number Declaration for the dependent and issuing payment summaries in their name.

Treatment of lump sum payments

Taxation determination 93/3 outlines that a payment that is a partial Commutation of weekly compensation payments is assessable income, as the underlying Benefit (ie. weekly compensation) was assessable income and its character has not changed by it being converted to a lump sum. However, payments received as a redemption of all the injured Worker's rights under the 1987 Act are of a capital nature and so are not included in assessable income. Nor are these payments assessable under the capital gains provisions.

If the Documentation supporting the Commutation under section 87E of the 1987 Act specifically indicates the level of weekly payments of compensation included in the lump sum amount, that amount should be treated as assessable income of the Worker.

Other commuted amounts under Division 3, Part 3 of the Act (ie. compensation for medical, hospital and rehabilitation expenses), or section 10 of the former Act, or where the Commutation includes

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such sums but the level of these amounts and those relating to weekly payments of compensation are not shown separately, may be regarded as being in the nature of a capital payment and not assessable income.

Lump sum payments in arrears

Lump sum payments in arrears include workers compensation weekly benefits relating to prior financial years. While lump sum amounts are taxable in the year of receipt, an injured Worker may be entitled to a Lump Sum Tax Offset in respect of such payments when the ATO assesses the Workers income taxation liability.

Lump sum payments that relate to an earlier income year or years are required to be shown on item “E” of a PAYG Payment Summary provided to an injured Worker. In addition the Scheme Agent is to supply to the injured Worker and the ATO along with the Payment Summary, a signed statement detailing the break up of the lump sum payment by financial year.

Overpayments of Workers compensation Entitlements

Taxation Determination TD2008/9 outlines that amounts of Workers Compensation Benefits mistakenly paid to Workers that the Worker is required to repay are not to be regarded as assessable income of that Worker. However should the debt subsequently be waived, then the ATO considers that there may be potential income tax or fringe benefits tax implications. The impact of these obligations on the Nominal Insurer is unclear and advice is in the process of being sought.

However to ensure that there are no potential adverse implications on the Nominal Insurer where such a debt is forgiven, such forgiven amounts are to be included in the assessable income of the Worker for PAYG purposes.

The overpayments are to be treated as a recovery to ensure that an Employers experience Premium is not adversely impacted by the overpayment. Accounting treatment for these overpayments is outlined in the Financial Reporting Manual.

References

2005 Deed Schedule 2

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