Taxation Determination

Income tax: is the deductible amount that is excluded from assessable income when a superannuation pension or annuity is paid reduced when the pension or annuity commences or finishes being paid to a taxpayer part-way through an income year?

This Ruling provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*. A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes. If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. Yes.

2. The Commissioner considers that the deductible amount for a superannuation pension or annuity calculated under subsection 27H(2) of the *Income Tax Assessment Act 1936* (ITAA 1936) is inappropriate if the pension or annuity has commenced or finished being paid to a taxpayer during an income year. Therefore, the deductible amount should instead be determined under subsection 27H(3) of the ITAA 1936. The Commissioner considers the deductible amount in these circumstances is the amount that would be calculated under subsection 27H(2) of the ITAA 1936 apportioned in accordance with the number of days the pension was payable to the taxpayer in that year.

Example

3. *Peter became entitled to a superannuation pension on reaching 60 years of age on 23 April 2004. He had made contributions of $120,000 after 1 July 1983 to the complying superannuation fund that pays the pension. This amount is the undeducted purchase price of the pension. The pension is payable for life and there is no residual capital value.*

4. *Peter's Life Expectancy Factor from the 1995-97 Australian Life Tables*[1] *is 20.05. The deductible amount as determined under section 27H(2) will be:*

$$\frac{1\ (\$120{,}000 - 0)}{20.05} = \$5{,}985\ \text{(truncated)}$$

This is the amount excluded if the pension is payable for the full income year.

5. *However, as Peter's pension was only payable for 69 days in the 2004 income year, the deductible amount must be apportioned so that the deductible amount for the 2004 year will be:*

$$\frac{\$5{,}985 \times 69}{366} = \$1{,}128\ \text{(truncated)}$$

6. *Peter will be able to claim the full deductible amount of $5,985 in the 2005 and subsequent income years in which the pension is payable for the entire year.*

Date of effect

7. This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Determination.

Commissioner of Taxation
12 April 2006

[1] The Australian Life Tables can be found at the Australian Government Actuary's website (www.aga.gov.au).

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

Explanation

8. Section 27H of the ITAA 1936 includes in assessable income the amount of a superannuation pension or annuity derived in an income year, excluding the 'deductible amount' for that pension or annuity. The deductible amount represents a portion of the 'undeducted purchase price' of the pension or annuity. The deductible amount is excluded from the assessable amount of the pension or annuity and is tax free to the recipient because it represents the return to the pensioner or annuitant of the amount paid to acquire the pension or annuity.

9. The deductible amount is determined for a superannuation pension or annuity for an income year. The deductible amount is generally determined by applying the formula in subsection 27H(2) of the ITAA 1936. Commonly, this simply involves dividing the undeducted purchase price of the pension or annuity by the relevant number. The relevant number is intended to represent the anticipated term of the pension or annuity.

10. However, under subsection 27H(3) of the ITAA 1936 the Commissioner may determine the deductible amount of a pension or annuity where the Commissioner considers the deductible amount calculated under the formula in subsection 27H(2) is inappropriate.

11. The Commissioner considers that the deductible amount worked out under subsection 27H(2) of the ITAA 1936 will be inappropriate where a pension or annuity is not payable to a taxpayer for the whole of the income year. For the purposes of subsection 27H(3) of the ITAA 1936, the deductible amount will instead be worked out by applying the proportion of the year for which the pension is payable to the deductible amount calculated under subsection 27H(2) of the ITAA 1936.

12. The deductible amount as determined under subsection 27H(2) of the ITAA 1936 will apply in all years for which the pension or annuity is payable to the taxpayer for the entire year.

References

Previous draft:

Not previously issued as a draft

Subject references:

- annuities & superannuation pensions
- deductible amount
- superannuation, retirement & employment termination
- undeducted purchase price
- undeducted purchase price Commissioner's discretion

Legislative references:

- TAA 1953
- ITAA 1936 27H
- ITAA 1936 27H(2)
- ITAA 1936 27H(3)

ATO references

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