

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

TREASURY

Australian Taxation Office

(Additional Estimates 14 February 2007)

Question **AET 143**
Topic: **Tax treatment of redundancy payments-ruling**
Hansard Page: **E73**

Senator **Sherry** asked:

I take it you have a ruling in this area?

Mr Konza—For annual leave and sick leave?

Senator SHERRY—No, the bona fide redundancy?

Mr Konza—Yes, we do.

Senator SHERRY—Has that been updated at all in recent times?

Mr Konza—I have no knowledge of that, so I would need to check.

Senator SHERRY—What about updating in terms of the recent industrial relations changes? Are there definitional changes within that?

Mr Konza—I would need to check on that. I am not aware that it has been updated.

Senator SHERRY—There may be operational reasons other than redundancy.

Mr Konza—The test under the tax law is the redundancy of the employee. To be redundant in that sense, the work that person once did needs to be no longer done. That is the essence of our ruling.

Senator SHERRY—You could have a circumstance where the work will continue to be done but in a different way.

Mr Konza—Our ruling goes into those sorts of circumstances. As I said, I do not have a definite knowledge of whether that ruling has been reviewed in light of new legislation and environmental developments. I would need to check on that.

Answer:

The relevant ruling is Taxation Ruling 94/12. In brief, it explains that redundancy is “where an employer no longer requires employees to carry out work of a particular kind or to carry out work of a particular kind at the same location”. It states that a position is considered to be redundant if:

- an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone;
- that decision is not due to the ordinary and customary turnover of labour;
- that decision led to the termination of the employee's employment; and
- that termination of employment is not on account of any personal act or default of the employee.

At the time of the Committee meeting, there had been no changes made to the *Income Tax Assessment Act 1936* as a result of workplace relations reforms. Therefore, the ruling had not needed to be updated. The facts of each case had to be considered against the existing income tax law, as explained in the Taxation Ruling 94/12.

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However, I note that the provisions have subsequently been rewritten into the *Income Tax Assessment Act 1997* as part of the superannuation reforms. The rewrite did not make any substantive changes to operation the law. Taxation Ruling 94/12 continues to apply to these arrangements.