

# COMMISSIONER'S GUIDELINE

## CG-PRT-005:

### Termination payments

#### Guideline History

Version	Issued	Dates of effect	
		From:	To:
1	20 February 2008	1 July 2007	30 June 2008
2	1 July 2008	1 July 2008	Current

#### Purpose

The Australian government introduced superannuation reforms effective from 1 July 2007. One of the consequences of this reform is a change in the treatment of employment termination payments for income tax purposes and also changes in the terminology of termination payments.

This guideline clarifies which termination payments are subject to payroll tax.

#### Termination payments

Termination payments generally constitute wages for payroll tax purposes under section 3R of the *Pay-Roll Tax Act*. These include:

- 1) a payment made in consequence of the retirement from, or termination of, any office or employment of an employee. This includes:
  - (i) unused annual leave and long service leave payments;
  - (ii) employment termination payments, within the meaning of section 82-130 of the *Income Tax Assessment Act 1997* ('ITAA'), that would be included in the assessable income of an employee under Part 2-40 of the ITAA;
  - (iii) transitional termination payments, within the meaning of section 82-10 of the *Income Tax (Transitional Provisions) Act 1997* and any payment that would be an employment termination payment but for the fact that it was received more than 12 months after termination;
- 2) amounts paid or payable by a company as a consequence of terminating the services or office of a director.

By way of a general guide, termination payments may include:

- payments for unused sick leave or rostered days off;
- payments made in lieu of notice;
- a gratuity or 'golden handshake';
- compensation for loss of a job or wrongful dismissal;
- an employee's invalidity payment (a permanent disability, other than compensation for personal injury); and
- certain payments after the death of an employee.

However, termination payments do not include:

- the tax free part of a 'genuine redundancy payment'<sup>1</sup> and 'early retirement scheme payment';<sup>2</sup>
- 'reasonable' capital payments that are compensation for personal injury;<sup>3</sup> or
- 'reasonable' capital payments for restraint of trade.<sup>4</sup>

The amount subject to payroll tax is the amount of an employment termination payment paid by the employer that would be income tax assessable income of the employee.

The following amounts are not included in the assessable income of the recipient and so are not wages for payroll tax purposes.

- 1) The 'tax free component' of an employment termination payment, whether it is a 'life benefit termination payment' or a 'death benefit termination payment'.<sup>5</sup>
- 2) The tax-free component includes the 'pre-July 83 segment' of a termination payment (essentially, the proportion of the payment relating to the employee's employment prior to 1 July 1983),<sup>6</sup> which means that this amount is not wages for payroll tax purposes.
- 3) That part of the 'assessable component' of an employment termination payment that is a death benefit termination payment received by a 'death benefits dependent' which is below the 'ETP cap amount' for a particular year. The 'ETP cap amount' is indexed annually and is available from the ATO website [www.ato.gov.au](http://www.ato.gov.au).

<sup>1</sup> See section 83-175 of the ITAA9 – payments were previously referred to as 'bona fide redundancy payments'.

<sup>2</sup> See section 83-180 of the ITAA97 – previously referred to as 'approved early retirement scheme payments'.

<sup>3</sup> See section 82-135(i) of the ITAA97.

<sup>4</sup> See section 82-135(j) of the ITAA97.

<sup>5</sup> Sections 82-10(1), 82-65(1) and 82-70(1) of the ITAA97.

<sup>6</sup> Section 82-140 of the ITAA97.

- 4) The invalidity segment of an employment termination payment is income tax free and is not subject to payroll tax.<sup>7</sup>

**Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Guideline. All Circulars and Guidelines are available from [TRO's website](#).**

**Date of effect**

This version of the Guideline takes effect from date of issue.



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**COMMISSIONER OF TERRITORY REVENUE**

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<sup>7</sup> See section 82-150 of the ITAA.