

Termination payments

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(Payroll Tax Act 2007)

Ruling number PTA 004

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Issued by **Tony Newbury**
Chief Commissioner of State Revenue

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Effective to -

Status **Current**

Preamble

The Payroll Tax Act 2007 (the Act), which commenced on 1 July 2007, rewrites the Pay-roll Tax Act 1971 and harmonises the payroll tax legislation in Victoria and NSW. One of the areas which has been harmonised is the treatment of termination payments for payroll tax purposes.

The Commonwealth 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. Employers should contact the Australian Taxation Office for advice in relation to the income tax treatment of employment termination payments, transitional termination payments, unused annual leave and long service leave payments, and genuine redundancy payments and early retirement scheme payments.

This revenue ruling clarifies which termination payments are subject to payroll tax.

Ruling

Termination payments generally constitute wages for payroll tax purposes under section 27 of the Act. These include:

a payment made in consequence of the retirement from, or termination of, any office or employment of an employee. This includes:

- unused annual leave and long service leave payments
- 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*
- 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
- amounts paid or payable by a company as a consequence of terminating the services or office of a director
- amounts paid or payable by a person taken to be an employer under the contractor provisions as a consequence of termination of the supply of services by a person taken to be an employee under those provisions.

Employment termination payments

Employment termination payments may include:

- payments for unused sick leave or rostered days off
- payments in lieu of notice
- ex gratia payments or 'golden handshakes'
- an employee's invalidity payment (a permanent disability, other than compensation for personal injury) and
- certain payments after the death of an employee.

Employment termination payments do not include:

- a payment for unused annual leave or unused long service leave (however, such payments are subject to payroll tax – see section below) or
- the tax free part of a genuine redundancy payment or an early retirement scheme payment.

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.

Genuine redundancy payments (previously known as bona fide redundancy payments) and early retirement scheme payments (previously known as approved early retirement scheme payments)

A payment arising from the termination of employment may constitute either a genuine redundancy payment under section 83-175 of the *ITAA* or an early retirement scheme payment under section 83-180 of the *ITAA*. Such payments are exempt from payroll tax to the extent that they are exempt from income tax.

Invalidity payments

The invalidity segment of an employment termination payment within the meaning of section 82-150 of the *ITAA* is income tax free and is not subject to payroll tax.

Unused annual leave and long service leave

All unused (accrued) annual leave and long service leave paid to an employee upon termination of the employee's services (including a bonus, loading or other additional payment relating to that leave) is subject to payroll tax.

Unused sick leave paid upon termination of employment forms part of an employment termination payment and is considered in the previous section.

Death benefit employment termination payments

A death benefit employment termination payment is an employment termination payment made as consequence of an employee's death. Part of such payments may be income tax free in the hands of the recipient and this income tax exempt part is exempt from payroll tax.

Please note that rulings do not have the force of law. Each decision made by the Office of State Revenue is made on the merits of each individual case having regard to any relevant ruling.