

TERMINATION PAYMENTS

The *Pay-roll Tax (Harmonisation Project) Amendment) Act 2008*, which was assented to on 26 June 2008 and comes into operation on 1 July 2008, makes amendments to the *Pay-roll Tax Act 1971* (the "Act") to harmonise legislative and administrative arrangements with other States and Territories. One of the areas that has been harmonised is the treatment of termination payments for pay-roll tax purposes.

The Commonwealth government introduced superannuation reforms effective from 1 July 2007. One of the consequences of this reform was 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, genuine redundancy payments and early retirement scheme payments.

This Circular clarifies which termination payments are subject to pay-roll tax.

Termination payments generally constitute wages for pay-roll tax purposes under section 3(1ab) 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;
 - (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; and
 - (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.
- amounts paid or payable by a company as a consequence of terminating the services or office of a director; and
- 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.

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

Employment termination payments do not include:

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

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 pay-roll 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 pay-roll 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 pay-roll tax.

Unused sick leave paid upon termination of employment forms part of an employment termination payment and is considered above.

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 pay-roll tax.

This Circular is effective from 1 July 2008.

**Please note that circulars do not have the force of law.
FURTHER INFORMATION**

Further information regarding these amendments may be obtained from RevenueSA.

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3/7/2008

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