

Tax table for employment termination payments



FOR PAYMENTS MADE ON OR AFTER 1 JULY 2009.



This document is a withholding schedule made by the Commissioner of Taxation in accordance with sections 15-25 and 15-30 of Schedule 1 to the *Taxation Administration Act 1953*. It applies to withholding payments covered by paragraph 12-85 (b) of Schedule 1.



For more information visit www.ato.gov.au



WHO SHOULD USE THIS TABLE?

Use this table if you make an employment termination payment (ETP) to an individual.

EMPLOYMENT TERMINATION PAYMENTS

An ETP is a lump sum payment paid to an individual when their employment is terminated or after another person's death, in consequence of the termination of the other person's employment. ETPs include lump sum payments paid upon resignation, retirement or death.

A payment must generally be made within 12 months of termination to qualify as an ETP. Payments made outside 12 months should be taxed as ordinary income at marginal tax rates. A payment from a superannuation fund is not an ETP.

The types of ETPs subject to withholding include:

- a payment in lieu of notice
- a payment for unused sick leave
- a payment for unused rostered days off
- a 'golden handshake' whether paid under contract, industrial award obligation or the employer's desire to recognise past service
- compensation for loss of job
- compensation for wrongful dismissal
- a redundancy payment that exceeds the tax-free limit* (only the amount in excess of the limit is an ETP)
- a payment because of the employee's permanent disability (other than a compensation payment for personal injury)
- payment under an early retirement scheme that exceeds the tax-free limit* (only the amount in excess of the limit is an ETP)
- lump sum payments paid on the death of an employee.

* The tax-free limit for the 2009–10 income year is \$7,732 plus \$3,867 for each year of completed service.

- ❗ The concessional tax treatment for ETPs is limited by the ETP cap amount. Amounts paid in excess of the ETP cap amount are taxed at the top marginal rate (plus Medicare levy).

Transitional termination payments

Transitional arrangements may apply to payments made between 1 July 2007 and 30 June 2012 if the employee was entitled, as at 9 May 2006, to such a payment specified under one of the following:

- a written contract
- an Australian or foreign law (or an instrument under such a law)
- a workplace arrangement under the *Workplace Relations Act 1996*.

Transitional termination payments are taxed concessionally on amounts up to the upper cap amount. Further concessions apply for employees over their preservation age at the end of the income year in which the payment is made. For employees in this category, amounts up to the lower cap amount are taxed at no more than 15% (plus Medicare levy).

Split employment termination payments

For various reasons, employment termination payments may be made in more than one instalment. For payments made subsequent to the initial payment, the ETP cap, lower cap and upper cap amounts are reduced by the amount of all previous payments that counted towards these caps when the previous payment was made.

Payments made before 1 July 2007 do not count towards the ETP cap, lower cap and upper cap amounts.

- ❗ Lump sum payments that are not ETPs may also be subject to PAYG withholding. Use the applicable tax table to work out the amount to be withheld from these payments. For unused annual leave, leave loading or long service leave payments, see *PAYG withholding – Tax table for unused leave payments on termination of employment* (NAT 3351).

- For more information on ETPs, refer to:
 - *Employment termination payments* (NAT 70643)
 - *Employment termination payments – transitional arrangements* (NAT 70644).

- ❗ Do not allow for any tax offsets or Medicare levy adjustments. Do not add amounts for Higher Education Loan Program (HELP) or Student Financial Supplement Scheme (SFSS).

HOW TO WORK OUT WITHHOLDING AMOUNTS

1 If a payee has provided you with their tax file number (TFN)

If a payee receiving an ETP has provided you with their TFN, you must calculate the amount to be withheld by applying the rates set out in Table A on page 3.

If you are an employer, an employee may have given you a *Tax file number declaration* (NAT 3092) while they were working for you. This declaration will still be effective for 12 months after you make the last payment to the employee.

An ETP is made up of the tax-free component and taxable component.

You must withhold an amount from the taxable component, including death benefit ETPs, according to Table A on page 3. Do not withhold from the tax-free component of the ETP.

For more information on ETP components, visit our website www.ato.gov.au

2 If the payee has not provided you with their TFN

If the payee receiving the ETP has not provided you with their TFN before the ETP is made, you must withhold 46.5% from the taxable component.

If the payee is a prescribed foreign resident who has not provided you with their TFN, you must withhold 45% from the taxable component.

ROUNDING OF WITHHOLDING AMOUNTS

Withholding amounts calculated by applying this table should be rounded to the nearest dollar. Values of 50 cents or higher are rounded upwards. If a TFN is not provided, ignore cents when calculating withholding amounts.

EXAMPLE

ETP made by an employer

Jane and Michael are employees of SmallBiz Pty Ltd and are aged 53 and 55 respectively. The preservation age for both of them is 55. They started working for SmallBiz on the same day and both resign on the same day so that they can start a new business as partners.

Under their employment contracts, Jane and Michael will both receive an ETP of \$10,000 from SmallBiz. Each ETP has a tax-free component of \$2,000 and a taxable component of \$8,000. SmallBiz is required to withhold an amount under the PAYG withholding system. Jane and Michael have previously provided their respective TFNs to SmallBiz.

SmallBiz does not need to withhold from the tax-free component of \$2,000, but must withhold an amount from the taxable component of \$8,000.

As Jane is under preservation age, she pays tax at a different rate to employees who are over preservation age. So SmallBiz withholds \$2,520 from Jane's ETP. This is 31.5% (30% plus Medicare levy) of Jane's taxable component of \$8,000.

As Michael has reached his preservation age, he is entitled to a more concessional tax rate which is 15% plus Medicare levy. So SmallBiz withholds \$1,320 from Michael's ETP. This is 16.5% of Michael's taxable component of \$8,000.

PAYMENT SUMMARIES

Within 14 days of making an employment termination payment, you must provide a *PAYG payment summary – employment termination payment* (NAT 70868) to the recipient of the employment termination payment.

Payment summaries can also be printed using Tax Office approved software.

For more details and specifications of Tax Office approved software, visit www.ato.gov.au/softwaredevelopers

PRESERVATION AGE

Preservation age is determined using your employee's date of birth. The preservation table below will help with this:

Date of birth	Preservation age
Before 1/7/1960	55
1/7/1960 – 30/6/1961	56
1/7/1961 – 30/6/1962	57
1/7/1962 – 30/6/1963	58
1/7/1963 – 30/6/1964	59
After 30/6/1964	60

Income component derived by the payee in the income year	Age of person at the end of the income year in which the payment is received	Component subject to PAYG withholding	Rate of withholding (including Medicare levy)
Life benefit ETP – taxable component	Under preservation age	Up to the ETP cap amount ¹	31.5%
	Preservation age and over	Up to the ETP cap amount ¹	16.5%
	All ages	Amount above the ETP cap amount ¹	46.5%
Transitional ETP – taxable component	Under preservation age	Up to the lower cap amount ²	31.5%
	Preservation age and over	Up to the lower cap amount ²	16.5%
	All ages	Amount above the lower cap amount ² up to the upper cap amount ³	31.5%
		Amount above the upper cap amount ³	46.5%
Death benefit ETP paid to non-dependants ⁴ – taxable component	All ages	Up to the ETP cap amount ¹	31.5%
		Amount above the ETP cap amount ¹	46.5%
Death benefit ETP paid to dependants ⁴ – taxable component	All ages	Up to the ETP cap amount ¹	Nil
		Amount above the ETP cap amount ¹	46.5%

¹ The ETP cap amount for the 2009–10 income year is \$150,000. The amount is indexed annually.

² The lower cap amount is the same as the ETP cap amount for the income year. That is, for the 2009–10 income year it is \$150,000 and is indexed in line with the ETP cap amount.

³ The upper cap amount for 2009–10 is \$1,000,000. The upper cap amount is reduced by the amount of all previous transitional termination payments and the taxable component of any directed termination payments.

⁴ A dependent includes both child and spouse of the deceased.

Child of the deceased includes all of the following:

- an adopted child, stepchild or ex-nuptial child
- a child of the deceased's spouse
- someone who is a child of the deceased within the meaning of the *Family Law Act 1975* (for example, a child who is considered to be a child of a person under a state or territory court order giving effect to a surrogacy agreement).

Spouse of the deceased includes all of the following:

- another person (whether the same sex or opposite sex):
 - with whom the deceased was in a relationship that was registered under a law of a prescribed state or territory law
 - who lived with the deceased on a genuine domestic basis in a relationship as a couple.

A dependent includes any person with whom the deceased had an interdependency relationship. An interdependency relationship includes a close personal relationship between two people who live together, where one or both provides for the financial and domestic support and personal care of the other.

A dependent can also be a person who was a dependent of the deceased just before the latter died. Before accepting that a person is financially dependent, phone **13 10 20** for more information.

If the ETP is to be paid to the trustee of a deceased estate, an amount should not be withheld.

➤ MORE INFORMATION

Copies of weekly and fortnightly tax tables are available from most newsagents. Newsagents also hold copies of the *Tax file number declaration* (NAT 3092) and the *Withholding declaration* (NAT 3093).

If you need more information about any of our PAYG withholding tax tables and other PAYG publications, you can:

- visit our website at **www.ato.gov.au**
- phone **13 10 20** for ETP enquiries
- phone **13 28 66** for general PAYG enquiries
- phone **1300 720 092** to order Tax Office forms or publications, or visit **www.ato.gov.au/onlineordering**
- write to us at:
Australian Taxation Office
PO Box 3578
ALBURY NSW 2640

If you do not speak English well and want to talk to a tax officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

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