



Status: **legally binding**

## Class Ruling

# Rugby League Players' Association Limited – employment termination payment

### **❶ Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

| <b>Table of Contents</b>      | <b>Paragraph</b> |
|-------------------------------|------------------|
| What this Ruling is about     | 1                |
| Who this Ruling applies to    | 4                |
| When this Ruling applies      | 5                |
| <b>Ruling</b>                 | <b>6</b>         |
| <b>Scheme</b>                 | <b>10</b>        |
| <b>Appendix – Explanation</b> | <b>59</b>        |

### **What this Ruling is about**

1. This Ruling sets out the income tax and fringe benefits tax consequences of payments from the Player Retirement Account (PRA) received by National Rugby League (NRL) players (Players) who are members of the Rugby League Players' Association Limited (RLPA).
2. Details of this scheme are set out in paragraphs 10 to 58 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - are an NRL player that is a member of the RLPA (Member), and
  - receive a payment mentioned under this scheme.

### **When this Ruling applies**

5. This Ruling applies from 1 July 2025 to 30 June 2030.

---

Status: **legally binding**

---

## **Ruling**

---

6. A payment made by the RLPA from the PRA to a Member within 12 months of termination of their employment will be an employment termination payment (ETP) under section 82-130.
7. A payment made by the RLPA from the PRA to a Member more than 12 months after termination of their employment will not be an ETP under section 82-130. The payment will be assessable income of the Member under section 83-295.
8. A payment made by the RLPA from the PRA to a Member where the payment is an ETP, will not be classified as a fringe benefit under paragraph (1c) of the definition of 'fringe benefit' in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).
9. A payment made by the RLPA from the PRA to a Member where the payment is not an ETP apart from paragraph 82-130(1)(b), will also not be classified as a fringe benefit under paragraph (1d) of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA.

## **Scheme**

---

10. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.
11. The RLPA was incorporated on 28 January 2009.
12. The RLPA changed its status from an incorporated association to a company limited by guarantee in 2015.
13. The RLPA is the collective representative body for male and female rugby league players participating in the National Rugby League competitions. It represents the players on all matters that affect them and protects and promotes their welfare and interests.
14. The RLPA was established to:
- safeguard the workplace rights of present NRL and National Women's Rugby League players
  - provide for and improve the welfare of its members
  - provide advice, services and assistance, where deemed appropriate, to its members
  - pursue initiatives that will ultimately benefit the membership
  - promote the game of rugby league.
15. The RLPA is not formally registered as a trade union but is registered as a public company limited by guarantee.

### **Constitution of Rugby League Players' Association Limited dated October 2018**

16. The objects of the RLPA as outlined in clause 8 of its constitution are to:
- (a) provide Players with a unified collective representative organisation;
  - (b) protect and advance the employment, industrial, professional, safety and welfare rights and interests of Players;

---

Status: **legally binding**


---

- (c) achieve and maintain fair minimum workplace standards and terms and conditions of employment for Players;
- (d) represent Players in collective bargaining negotiations with the NRL and NRL Clubs;
- (e) to represent, and provide support for, Players in employment disputes;
- (f) promote the game of Rugby League by providing a medium through which Players may express their views on issues concerning the well-being of the game of Rugby League and their own well-being within the game;
- (g) strive for the improvement of economic and other conditions generally of Players and to regulate compliance with agreed conditions and correct breaches of same and to secure and maintain freedom from unjust and unlawful rules and regulations affecting the involvement of Players in the game of Rugby League;
- (h) provide information and assistance to Players;
- (i) develop such arrangements, projects and schemes that will benefit the game of Rugby League and Players;
- (j) establish a long term program committed to providing ongoing professional support and counselling to Players in a wide range of matters including, but not limited to, personal development and financial, legal, marital and grief counselling;
- (k) assist, participate and work with the ARLC, NRL, New South Wales Rugby League and Queensland Rugby League to enhance the game of Rugby League;
- (l) facilitate marketing and licensing opportunities for Players and in doing so obtain benefits for all Members consistent with these rules;
- (m) monitor all matters relating to the health and safety of Players and ensure they are both consistent with Players' best interests and of an appropriate standard, including training practices and training facilities, recovery procedures, policies relating to drug testing and supplements, medical facilities, medical equipment and medical advice, the prevention and management of injuries, insurance and the provision of a safe working environment;
- (n) actively support scientific research into the diagnosis, management and rehabilitation of significant injury that may occur as the result of participation in Rugby League, especially in the areas of concussion and spinal injury;
- (o) work to increase understanding of culturally and linguistically diverse communities including Indigenous Australian and Māori / Pacific Islander cultures, and by that means engender an appreciation of how cultural diversity impacts on Players' experience and access to the game of Rugby League;
- (p) to establish funds for the general conduct of the Company, from either and not limited to borrowing and raising money by debentures, the purchase, sale, mortgage, lease or other dealings in real and personal property of all kinds;
- (q) to undertake, defend or intervene in any proceedings in any court of law or arbitration which in the opinion of the Company affects or may affect directly or indirectly the rights or interests of Members or of persons eligible to be Members or of any of them;
- (r) to appoint and employ officers, solicitors, accountants, auditors and other persons considered necessary for the efficient working of the Company and to pay such salaries, fees and allowances to persons so appointed and to Members of the Company engaged in furthering the objects and work of the Company and to establish superannuation and retiring funds for the benefit of officers and employees and ex-officers and ex-employees of the Company;

---

Status: **legally binding**

---

- (s) to affiliate, absorb, or foster relations with any organisation or body, including an associated entity, which has objects and/or interests similar to the objects and/or constitution and/or interests of the Company; and
  - (t) to do all such other things as the Company may from time to time deem incidental or conducive to the attainment of the above objects or any of them.
17. Clause 6.1 of the constitution states:
- The Company must not make any distribution of profits to Members, whether by way of dividend, or surplus on winding up.
18. Clause 6.2 of the constitution states:
- If the Company is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities are to be given or transferred to some other institution or institutions having objects similar to the purposes of the Company.
19. The various classes of membership are outlined in clause 9 of the constitution. Membership must be approved by the board of the RLPA and is open to players contracted to play in various defined rugby league competitions around Australia.

### Collective bargaining agreement

20. Clause 3 of the collective bargaining agreement (CBA) (for the period 1 November 2022 to 31 October 2027) provides definitions of terms used within it, including:
- ARLC** means the Australian Rugby League Commission
  - ...
  - Player** means a player of Rugby League who is either:
    - (a) a NRL Player; and/or
    - (b) a NRLW Player.
  - ...
  - Total Player Payments or TPP** means the total payments to Players as set out in clause 12.7 and outlined in more detail in Schedule 1.
21. For the purposes of the CBA, NRL refers to National Rugby League Limited.
22. As part of the CBA between National Rugby League Limited and the RLPA, the RLPA receives cash from National Rugby League Limited as part of its operations for the collective benefit of Members.
23. This money is used by the RLPA for a variety of purposes, including payments from the PRA to retiring Members, payments to support Member welfare, education and training and the administrative expenses of the RLPA.
24. Clause 58 of the CBA deals with the PRA as follows:
- 58.1 The Parties agree that the Retirement Account will be funded from the TPP at the minimum amounts as set out in Schedule 1.
  - 58.2 The NRL shall make the payments of the amounts set out in Schedule 1 to the RLPA by 30 November each Season, to be deposited into the Retirement Account for the benefit of Players contracted to a Club's Top 30 (**Retirement Account Contribution**).

---

Status: **legally binding**

---

- 58.3 The Retirement Account is governed by the Retirement Account Rules as agreed between the Parties. The Retirement Account Rules govern (amongst others):
- (a) administrative and operational committee (**Retirement Account Committee**);
  - (b) policy and objectives, including the objective of minimising subjectivity in decision making;
  - (c) scope;
  - (d) rules and criteria detailing the eligibility of recipients and the assessment of benefits; and
  - (e) general operations and applicable standards/parameters.
- 58.4 No adjustment will be made to the risk profile and investment principles, strategy and framework of the Retirement Account without the mutual agreement of the Parties. For clarity, this includes the principle that all Players be treated equally in the Retirement Account and that the investment criteria has a low risk profile.
- 58.5 The Parties agree to review the existing Retirement Account Rules and agree any amendments by no later than 30 April 2024 (unless otherwise agreed). The updated Retirement Account Rules will be included as a Schedule to this Agreement once finalised.
- 58.6 The Parties agree that the RLPA will manage the day-to-day operation, resourcing and administration of the Retirement Account in accordance with the Retirement Account Rules.
- 58.7 The RLPA will be entitled to reasonable expense costs paid to third party advisors associated with the proper management and regulatory compliance of the Retirement Account, with such costs to be deducted from the Retirement Account fund. This may include audit costs and accounting, taxation and investment advice.
- 58.8 The RLPA will provide the ARLC with an annual report including management accounts and an auditors report, on the performance of the Retirement Account (including total sums in and out of the Retirement Account) for the previous Season and compliance with the Retirement Account Rules by 30 November each year. Audited Accounts will be provided following the completion of the RLPA's AGM each year.

25. An RLPA Member's entitlement to a payment from the PRA is a legal entitlement under the CBA, not the employment contract.

### **Establishment of the Rugby League Players' Association Player Retirement Account**

#### ***Initial operations***

26. The RLPA have been managing the PRA since 18 October 2019, when funds in the PRA were transferred by National Rugby League Limited in line with the Transition Deed.

27. The PRA is only for the benefit of the RLPA members participating in the NRL.

### **Administration of the Player Retirement Account**

28. The PRA continues to be administered by the RLPA.

29. The amount received by the RLPA from National Rugby League Limited under the CBA and allocated by the RLPA to the PRA is invested by the RLPA and accrues income.

---

Status: **legally binding**

---

30. Market risk will continue to apply to investments. However, Members will recognise the RLPA will provide them an estimate of the balance within their Member's Account that is expected to be payable upon termination of their playing career.

### ***Receipt from the National Rugby League Limited***

31. Players who are contracted to the Top 30 list or roster at each NRL club are eligible for a benefit from the Retirement Account.

32. Ownership of the PRA rests with the RLPA and the decision to allocate any amount to the Retirement Account is made by the RLPA.

33. The payment is made prior to the finalisation of Clubs' playing lists.

34. In effect there are 4 main Member movement finalisation dates:

- Clubs must finalise their Top 30 list by 30 June each season.
- Clubs must have at least 24 Players by 1 November of the previous year.
- Clubs must have a minimum of 28 Players by the start of the playing season (around the commencement of March).
- Clubs must have a full roster of 30 Players by 30 June.

35. Each of those first 30 Players contracted are eligible to receive a full benefit, notwithstanding that they may have been contracted at a later date in the season.

36. Where a Player's contract is terminated prior to the end of the season, he will accrue a pro rata amount based on 'time served' in that contract year. If the Player is then replaced by another Player, that new Player will also accrue a pro rata amount based on his time served in that contract year.

37. The contract year for a Player is 1 November to 31 October.

38. Where a Player is terminated but not replaced, the balance of his pro rata benefit is held in a contingency line which is managed by the RLPA, who manage and utilise it for extenuating circumstances (for example, a Player who is medically retired receives the full allocation with some or all of that coming from the contingency).

39. For each season that they are contracted as part of a Top 30 roster, a nominal contribution is allocated to a Member's account within the PRA once player lists have been finalised. This does not happen until the end of the financial year.

40. This means amounts received by the RLPA from the NRL can only be allocated to Members' accounts within the PRA at the conclusion of the season each year.

41. The receipt from the NRL is held by the RLPA in a separate account within the PRA until list finalisation for the season is complete.

42. Once list finalisation has been completed, the RLPA transfers the amount it has determined will be the annual PRA contribution to its investment manager for the PRA assets for its Members.

### **Payment arrangements upon retirement**

43. The RLPA has established internal rules, consistent with the general employment regime that applies in the NRL competition, to determine when a Member would be entitled to payment upon the Member's retirement from the NRL competition.

---

Status: **legally binding**

---

44. The internal rules provide that the payment will be made to a Member upon written confirmation of the Member's retirement and sign off by the PRA Committee (Committee), to ensure that the Member does not re-enter the NRL competition following the Member's retirement.

45. When a Member retires from his professional playing career and confirms this in writing to the RLPA, the Member makes an application to the RLPA for the payment of benefits from the PRA.

46. Upon the RLPA being satisfied the Member meets the criteria for payment in accordance with the PRA rules, the RLPA will provisionally approve the payment to the Member of the benefits accrued in his account, less applicable taxes.

47. At each Committee meeting governing the running of the PRA, the RLPA will provide the Committee with a summary of all applications received and provisionally approved for payment, since the last Committee meeting.

48. The Committee will then decide whether to approve these applications. In urgent cases where it is not possible to wait until the next Committee meeting, the Committee may approve an application (on a unanimous basis only) by circular resolution in writing.

49. There shall be no appeal from the decision of the Committee.

50. The Committee will confirm the Member has been delisted from an NRL Club List and not re-employed in the NRL system.

51. The balance that has accrued in the PRA for the Member's future benefit (that is, annual contributions plus any accumulated net investment earnings) will then be paid out, less tax withheld.

52. Payments made to Members from the PRA account will only be taxed at the time the Member receives the payment.

#### **Need for a payment upon National Rugby League playing career ending**

53. The RLPA and the NRL recognise there is a continuing need for Members to access a payment upon the conclusion of their playing career.

54. The lump sum is to provide an immediate injection of cash upon retirement from playing to provide the Member with a cash sum to start his second career at the conclusion of his NRL playing days.

55. This is consistent with the Objects and Purpose of the RLPA as outlined in clause 8(i) of its constitution, to 'develop such arrangements, projects and schemes that will benefit the game of Rugby League and Players'.

#### **Application for early release due to hardship**

56. The PRA Rules provide that<sup>1</sup>:

... an Eligible Person may make an application requesting payment of some or all of the benefit accrued to him, prior to him retiring from professional rugby league, where he is suffering demonstrated hardship (Hardship Application).

---

<sup>1</sup> At clause 46.

---

Status: **legally binding**

---

57. A Hardship Application may be made by an eligible person on the following grounds:

- compassionate grounds
- severe financial hardship
- diagnosis of a terminal medical condition
- suffering permanent incapacity, such as a career-ending injury.

#### **Documents relevant to the scheme**

58. The following documents are relevant for the purposes of the Scheme.

- Collective Bargaining Agreement 2023 – 2027 (with parties listed as ‘National Rugby League Limited’ and Rugby League Players’ Association)
- Regulations of the RLPA Player Retirement Account – effective 12 May 2025
- Constitution of the Rugby League Players’ Association Limited (effective October 2018)
- Company Search of the corporate secretarial details of the Rugby League Players’ Associated Limited
- Accounts of the Rugby League Players’ Association Limited for the year ended 31 October 2024
- Standard NRL Playing Contract
- Transfer deed for PRA between the NRL and the RLPA.

---

**Commissioner of Taxation**

10 September 2025

---

Status: **not legally binding**

## Appendix – Explanation

**❶** *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

| <b>Table of Contents</b>                                                   | <b>Paragraph</b> |
|----------------------------------------------------------------------------|------------------|
| Employment termination payment                                             | 59               |
| <i>Payments received 'in consequence of' the termination of employment</i> | 63               |
| <i>Retirement benefit payments made from the Player Retirement Account</i> | 71               |
| Payments received no later than 12 months after the termination            | 75               |
| Payments made within 12 months of retirement                               | 80               |
| Payments made more than 12 months after retirement                         | 81               |
| <i>Payments that are not employment termination payments</i>               | 84               |
| Fringe benefits tax consequences                                           | 86               |
| <i>Payments made within 12 months of retirement</i>                        | 89               |
| <i>Payments made more than 12 months after retirement</i>                  | 90               |

### **Employment termination payment**

59. Payments made in consequence of the termination of your employment are known as employment termination payments.

60. Subsection 995-1(1) states that the phrase 'employment termination payment' has the meaning given to it by section 82-130.

61. Subsection 82-130(1) states that a payment is an employment termination payment if:

- (a) it is received by you:
  - (i) in consequence of the termination of your employment; or
  - (ii) after another person's death, in consequence of the termination of the other person's employment; and
- (b) it is received no later than 12 months after that termination (but see subsection (4)); and
- (c) it is *not* a payment mentioned in section 82-135.

62. All the conditions within subsection 82-130(1) need to be satisfied in order for a payment to be an ETP.

### ***Payments received 'in consequence of' the termination of employment***

63. To be an ETP under subsection 82-130(1), the payment must be received by you:

- in consequence of the termination of your employment, or
- after another person's death, in consequence of the termination of the other person's employment.

---

Status: **not legally binding**

---

64. The phrase ‘in consequence of’ is not defined within the ITAA 1997. However, the words have been interpreted by the courts in several cases. We have issued Taxation Ruling TR 2003/13 *Income tax: employment termination payments (ETP): payments made in consequence of the termination of any employment: meaning of the phrase ‘in consequence of’* which explains our view on the meaning of the phrase ‘in consequence of’ as used in Subdivision 82-C.

65. The Full High Court of Australia considered the expression ‘in consequence of the termination of any employment’ in *Reseck v Commissioner of Taxation (Cth)* [1975] HCA 38 (*Reseck*). The relevant issue in that case was whether amounts paid to a taxpayer by his employer at the end of 2 periods of employment, to which the taxpayer was entitled under an agreement between the employer and the taxpayer’s union, were an allowance paid in a lump sum ‘in consequence of retirement from, or the termination of, any office or employment ...’. Justice Gibbs concluded that the amounts were made in consequence of the termination of the taxpayer’s employment. His Honour said that:

Within the ordinary meaning of the words a sum is paid in consequence of the termination of employment when the payment follows as an effect or result of the termination ... It is not in my opinion necessary that the termination of the services should be the dominant cause of the payment ... In the present case the allowance was paid in consequence of a number of circumstances, including the fact that the taxpayer’s service had been satisfactory and that the industrial agreements provided for the payment, but it was none the less paid in consequence of the termination of the taxpayer’s employment.

66. Justice Jacobs also concluded that the amounts constituted an allowance that was paid in consequence of the termination of the taxpayer’s employment. His Honour said:

It was submitted that the words “in consequence of” import a concept that the termination of the employment was the dominant cause of the payment. This cannot be so. A consequence in this context is not the same as a result. It does not import causation but rather a “following on”.

67. The different interpretations of ‘in consequence of’ adopted by Justices Gibbs and Jacobs were considered by the Full Federal Court in *McIntosh, Charles v The Commissioner of Taxation* [1979] FCA 65 (*McIntosh*). The matter before the court concerned a taxpayer who one week after retirement, commuted part of the pension to which he became entitled upon his retirement, into a lump sum. The commuted payment was made out of a provident fund established by a bank for the payment of benefits to bank officers on their retirement. The issue being considered by the court was whether the commuted lump sum payment came within former paragraph 26(d) of the *Income Tax Assessment Act 1936*.

68. Justice Brennan considered the judgments of Justices Gibbs and Jacobs in *Reseck* and concluded that their Honours were both saying that a causal nexus between the termination and payment was required, though it was not necessary for the termination to be the dominant cause of the payment. Justice Brennan said that:

Though Jacobs J. speaks in different terms, his meaning may not be significantly different from the meaning of Gibbs J ... His Honour denies the necessity to show that retirement is the dominant cause, but he does not allow a temporal sequence alone to suffice as the nexus. Though the language of causation often contains the seeds of confusion, I apprehend his Honour to hold the required nexus to be (at least) that the payment would not have been made but for the retirement.

69. In the same case, Justice Lockhart stated:

In my opinion, although the phrase is sufficiently wide to include a payment caused by the retirement of the taxpayer, it is not confined to such a payment. The phrase requires that there be a connection between the payment and the retirement of the taxpayer, the act of retirement being either a cause or an antecedent of the payment. The phrase used in

---

Status: **not legally binding**

---

[section 26(d)] is not “caused by” but “in consequence of”. It has a wider connotation than causation and assumes a connection between the circumstance of retirement and the act of payment such that the payment can be said to be a “following on” of the retirement.

70. TR 2003/13 considers the divergent views as to the correct interpretation of the phrase ‘in consequence of’ as interpreted by the courts, and provides our view as to its interpretation. This is explained in paragraphs 5 to 7 of TR 2003/13:

5. ... the Commissioner considers that a payment is received by a taxpayer in consequence of the termination of the taxpayer’s employment if the payment ‘follows as an effect or result of’ the termination. In other words, but for the termination of employment, the payment would not have been received by the taxpayer.

6. The phrase requires a causal connection between the termination and the payment, although the termination need not be the dominant cause of the payment. The question of whether a payment is received in consequence of the termination of employment will be determined by the relevant facts and circumstances of each case.

7. The greater the length of time between the termination of employment and the payment, the more likely that the causal connection between the termination and the payment will be too remote for a conclusion that a payment was received in consequence of the termination of employment. However, length of time will not be determinative when there is a presently existing right to payment of the amount at the time of termination.

#### ***Retirement benefit payments made from the Player Retirement Account***

71. Under the Scheme, for the purposes of retirement benefits, a Member is required to have retired as discussed in paragraphs 43 to 52 of this Ruling. At the time the retirement benefit is paid, the Member would be retired, which means a termination of their employment. A payment from the PRA to a Member upon their retirement follows as an effect of the termination of their employment and therefore is received ‘in consequence of’ the termination of their employment for the purposes of subparagraph 82-130(1)(a)(i).

72. Subparagraph 82-130(1)(a)(ii) states that a payment will also be an ETP where it is received by you after another person’s death, in consequence of the termination of that other person’s employment.

73. Under the scheme, a payment will satisfy the requirements of subparagraph 82-130(1)(a)(ii) where it has been made from the PRA after the death of a Member, in consequence of the termination of their employment. Where a Member was not engaged in employment at the time of their death, any payment received from the PRA will not be considered to be ‘in consequence of’ the termination of their employment and therefore will not be an ETP.

74. Note that where a Member receives a payment as a result of a Hardship Application prior to their retirement from professional rugby league as discussed in paragraph 57 of the Scheme, this is not a payment for the termination of the employment and therefore is not an ETP.

#### ***Payments received no later than 12 months after the termination***

75. To be an ETP under subsection 82-130(1), paragraph 82-130(1)(b) provides that the payment must be received by you no later than 12 months after the termination of your employment. This is unless an exemption applies under subsection 82-130(4).

---

Status: **not legally binding**

---

76. Under subsection 82-130(4), an exemption to the 12-month rule will apply where:

- you are covered by a determination made by the Commissioner under subsection 82-130(5) or subsection 82-130(7), or
- the payment is a genuine redundancy payment or an early retirement scheme payment.

77. Subsection 82-130(5) states that the Commissioner may make a determination that the 12-month rule does not apply to you.

78. Under the scheme, where a Member has received a payment from the PRA later than 12 months after the termination of their employment (by retirement), the Member would need to make an application based on their individual circumstances in order for this subsection to apply to them.

79. Subsection 82-130(7) states that the Commissioner may, by legislative instrument, make a determination that the 12-month rule does not apply.

#### ***Payments made within 12 months of retirement***

80. Payments made within 12 months of the Member's retirement will meet the requirements of paragraph 82-130(1)(b).

#### ***Payments made more than 12 months after retirement***

81. Payments made more than 12 months after the Member's retirement will not meet the requirement of 82-130(1)(b) of the ITAA where an exemption from the 12-month rule does not apply under subsection 82-130(4).

82. An exemption under subsection 82-130(4) does not apply as a determination has not been made by the Commissioner under subsection 82-130(5) or 82-130(7).

83. As such, these payments will be assessable income of the Member in the income year that they are received, under section 83-295.

#### ***Payments that are not employment termination payments***

84. To be an ETP under subsection 82-130(1), the payment must not be a payment mentioned within section 82-135.

85. Under the scheme, the payments made to Members who have retired, and which are paid from the PRA, would not be payments listed in section 82-135.

#### ***Fringe benefits tax consequences***

86. A number of specific benefits are not included in the definition of a fringe benefit and are therefore not subject to fringe benefits tax under the FBTA.

87. The definition of a fringe benefit is included under subsection 136(1) of the FBTA.

88. A fringe benefit does not include:

- (lc) an employment termination payment (within the meaning of the *Income Tax Assessment Act 1997*); or

---

Status: **not legally binding**

---

- (ld) a payment that would be an employment termination payment (within the meaning of the *Income Tax Assessment Act 1997*) apart from paragraph 82-130(1)(b) of that Act.

#### ***Payments made within 12 months of retirement***

89. Under the scheme, payments made within 12 months of the Member's retirement, will be excluded as a fringe benefit under paragraph (lc) of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA, as they are ETPs.

#### ***Payments made more than 12 months after retirement***

90. Payments made more than 12 months after the retirement of the Member will be excluded as a fringe benefit under paragraph (ld) of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA, as they would be ETPs, apart from paragraph 82-130(1)(b).

---

Status: **not legally binding**

---

## References

---

### *Related rulings and determinations:*

TR 2003/13

### *Legislative references:*

- ITAA 1936 former 26(d)
- ITAA 1997 Subdiv 82-C
- ITAA 1997 82-130
- ITAA 1997 82-130(1)
- ITAA 1997 82-130(1)(a)(i)
- ITAA 1997 82-130(1)(a)(ii)
- ITAA 1997 82-130(1)(b)
- ITAA 1997 82-130(4)
- ITAA 1997 82-130(5)
- ITAA 1997 82-130(7)

- ITAA 1997 82-135
- ITAA 1997 83-295
- ITAA 1997 995-1(1)
- FBTA 1986 136(1)

### *Cases relied on:*

- *Reseck v Commissioner of Taxation (Cth)* [1975] HCA 38; 133 CLR 45; 75 ATC 4213; 5 ATR 538; 49 ALJR 317; 6 ALR 642
  - *McIntosh, Charles v The Commissioner of Taxation* [1979] FCA 65; 79 ATC 4325; 10 ATR 13; 25 ALR 557
- 

### ATO references

NO: 1-171533SN

ISSN: 2205-5517

BSL: SEO

ATOlaw topic: Income tax ~~ Assessable income ~~ Employment related ~~ Employment termination payments

---

© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).