



***CR 2006/77 - Income tax: eligible termination payment - special redundancy payment made by the New South Wales Government to timber industry workers under the Brigalow Timber Workers Assistance Fund***

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 This document has changed over time. This is a consolidated version of the ruling which was published on 1 July 2004



## Class Ruling

### Income tax: eligible termination payment – special redundancy payment made by the New South Wales Government to timber industry workers under the Brigalow Timber Workers Assistance Fund

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#### **ⓘ This publication provides you with the following level of protection:**

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

2. This Ruling approves the particular bona fide redundancy payment and acknowledges the availability of tax concessions for entities receiving payments under the scheme.

### Relevant provision(s)

3. The relevant provisions dealt with in this Ruling are:

- section 27A of the *Income Tax Assessment Act 1936* (ITAA 1936); and
- section 27F of the ITAA 1936.

## Class of entities

4. The class of entities to which this Ruling applies is all employees who receive a one off special redundancy payment of \$72,000 or \$27,000 made by the New South Wales (NSW) Government from the Brigalow Timber Workers Assistance Fund (BTWAF), who are under the age of 65 years when the payment is made, and under the scheme as described in paragraphs 15 to 31 of this Ruling.

## Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 15 to 31 of this Ruling.

7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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9. A copy of this Ruling must be given to all employees eligible to participate in the scheme.

## Date of effect

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10. This Ruling applies to the years of income ended 30 June 2005, 30 June 2006 and the year ending 30 June 2007. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

11. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

12. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

13. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## Withdrawal

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14. This Ruling is withdrawn and ceases to have effect after 30 June 2007. The Ruling continues to apply, in respect of the relevant provisions ruled upon, to all entities within the specified class who enter into the specified scheme during the term of the Ruling. Thus, the Ruling continues to apply to those entities, even following its withdrawal, for schemes entered into prior to withdrawal of the Ruling. This is subject to there being no change in the scheme or in the entities' involvement in the scheme.

## Scheme

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15. The scheme that is the subject of this Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the scheme are:

- Application for Class Ruling from the New South Wales (NSW) Department of Natural Resources (NSWDNR) dated 8 May 2006;
- Correspondence from representatives of the NSWDNR;
- Records of telephone conversations with a representative of Deloitte Touche Tohmatsu Ltd acting on behalf of the NSWDNR; and
- BTWAF Guidelines published by the Department of Infrastructure, Planning and Natural Resources – June 2005.

16. As stated in the BTWAF Guidelines, the NSW Government is committed to protecting the remaining high conservation areas of Brigalow Belt South and Nandewar regions whilst ensuring the continuation of viable and sustainable industries.

17. In order to assist the timber industry in the Brigalow Belt South and Nandewar regions adjust to changes brought about by the creation of the new Community Conservation Area (CCA), a package of assistance (the Brigalow Assistance Fund) has been made available to workers and businesses in the timber industry in these regions. One of the program areas funded by the Brigalow Assistance Fund is the BTWAF.

18. The objective of the BTWAF is to help workers who have been made redundant as a result of their employer deciding to exit the timber industry and of the creation of the CCA. In particular, the BTWAF is to help affected timber workers chart a secure future by preparing them for the future and to provide assistance to help affected timber workers make the transition to new jobs.

19. The delivery of workers' assistance to eligible timber workers is provided through the Forestry Structural Adjustment Unit (FSAU), located within the NSWDNR.

20. The class of persons the Class Ruling will apply to is all employee workers who receive a one off special redundancy payment of \$72,000 or \$27,000 made by the NSW Government from the BTWAF, who are under the age of 65 years when the payment is made.

21. This Ruling does not apply to self-employed harvesting or haulage contractors, or principals of affected businesses.

22. Those persons eligible for assistance are persons who have been employed by a timber business operating in the Brigalow Belt South and/or Nandewar region and who have been made redundant as a result of the creation of the CCA as either:

- mill workers; or
- employees of harvesting or haulage contractors; and

whose employer is applying for assistance from the Brigalow Timber Industry Exit Assistance Fund or the Brigalow Timber Industry Hardwood (Small Operators) Exit Assistance Fund.

23. To be eligible for assistance, a person must have been either:

- i. permanently employed in the timber industry prior to and as at 4 May 2005, and have been made redundant as a result of the creation of the CCA; or
- ii. permanently employed by a mill that is exiting the timber industry and have left employment within the period (approximately six months) leading up to the creation of the CCA on 4 May 2005 as a result of the impending Government resource and conservation decision; and
- iii. the person has made a formal application for assistance by 31 March 2006.

24. In addition, the following persons may be eligible for assistance:

- employees of mills and harvesting and haulage contractors that are outside the Brigalow Belt South and Nandewar region, but who operate from an adjacent region where the mill that they work for, draws resources from within the Brigalow Belt South and Nandewar region. Eligibility to receive a payment will be considered on a case by case basis.
- employees who were employed on a casual basis and who have demonstrated that their employment was regular and consistent. Assistance under the BTWAF is not intended for casual employees whose employment was irregular and/or sporadic (for example, seasonal workers).
- assistance payments outside the letter of the BTWAF guidelines may be made in exceptional circumstances, where the NSW Government is satisfied that its action is necessary to achieve the Government policy objectives.

25. It is noted that where an employee has been advised in writing by their employer that their position is to become redundant, and the employee subsequently takes up alternate employment during his/her notice period, the employee will not forego their eligibility to assistance.

26. Applicants seeking alternate employment opportunities under the BTWAF are required to apply for permanent employment with Forests NSW and the Department of Environment and Conservation, by completing an expression of interest form available from the FSAU. The applications will be managed by the FSAU who will advise applicants of the outcome of their application.

27. The BTWAF provides the following types of assistance:

- a one-off Special Redundancy Payment of \$72,000 plus training for job assistance of up to \$10,000; or
- where the person is seeking alternate employment, a one-off Special Redundancy Payment of \$27,000, plus training for job assistance of up to \$10,000, plus up to \$20,000 in relocation assistance where required, plus pre and post retrenchment training.

28. In addition, the following is noted in relation to the special redundancy payments:

- the payment is in addition to an employee's statutory redundancy entitlements from their employer;
- the payment is a flat rate and is not affected by the employee's length of employment;
- the eligibility for, or the quantum of, the payment is made without reference to any payment from the employee's employer; and
- for part time workers a pro rata of the payment is made based on the proportion of the hours they worked to full time hours.

29. The employer is liable to make redundancy payments for relocation and/or training which are specified in any relevant industrial award/s or applicable industrial agreement/s.

30. This Ruling does not apply to the following payments made under the BTWAF:

- Alternative employment;
- Retraining assistance;
- Pre-retrenchment training and services;
- Post retrenchment training;
- Training for jobs;
- Relocation assistance;
- Payments to self-employed persons;
- Principals of affected businesses; and
- Payments to persons over age 65 at time of termination.

31. This Ruling does not apply to anyone who receives a payment other than as an employee who has received a Special Redundancy Payment from the NSW Government under the BTWAF.

## **Ruling**

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32. The special redundancy payments of \$72,000 or \$27,000 made by the NSW Government under the BTWAF, on the termination of employment of the class of entities to whom this Ruling applies, will qualify as a bona fide redundancy payment (BFRP) under section 27F of the ITAA 1936.

33. Accordingly, so much of the eligible termination payment as exceeds the amount of an eligible termination payment (ETP) that could reasonably be expected to have been made in relation to the employee had he or she voluntarily retired from employment, is a BFRP in relation to the employee.

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**Commissioner of Taxation**

16 August 2006

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## Appendix 1 – Explanation

❶ ***This Appendix 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.***

### Eligible termination payment

34. Subsection 27A(1) of the ITAA 1936 contains an exhaustive definition of payments that will be ETPs along with certain exclusions. As far as is relevant for this case, an ETP is defined under paragraph (a) of the definition of 'eligible termination payment' (ETP definition) in subsection 27A(1) of the ITAA 1936 as including:

any payment made in respect of the taxpayer in consequence of the termination of any employment of the taxpayer...

35. For a payment to be an ETP, the payment must be made in relation to the taxpayer in consequence of the termination of his or her employment. In paragraph 5 of Taxation Ruling TR 2003/13 (TR 2003/13) the Commissioner states:

... a payment is made in respect of a taxpayer in consequence of the termination of the employment of the taxpayer 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 made to the taxpayer.

36. As further stated by the Commissioner in paragraph 6 of TR 2003/13, there must be:

... 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 made in consequence of the termination of employment will be determined by the relevant facts and circumstances of each case.

37. The phrase 'in consequence of termination of employment' is not defined in the legislation but the courts have considered the meaning of the words 'in consequence of' in a number of cases.

38. Of note are the decisions made by the Full High Court in *Reseck v. Federal Commissioner of Taxation* (1975) 49 ALJR 370; (1975) 6 ALR 642; (1975) 75 5ATR 538; (1975) 75 ATC 4213; (1975) 133 CLR 45 (*Reseck*) and the Full Federal Court in *McIntosh v. Federal Commissioner of Taxation* (1979) 25 ALR 557; (1979) 10 ATR 13; (1979) 45 FLR 279; (1979) 79 ATC 4325 (*McIntosh*).

39. Suffice to say that both Courts' views were that for a payment to be made in consequence of the termination of employment it had to follow on as a result or effect of the termination of employment.

40. Additionally, while it is not necessary to show that termination of employment is the sole or dominant cause, a temporal sequence alone would not be sufficient.

41. Thus if the payment follows as an effect or a result from the termination of employment, the payment will be made 'in consequence of' the termination of employment and will be an ETP unless specifically excluded by any of the provisions of paragraphs (ja) to (s) of the ETP definition in subsection 27A(1) of the ITAA 1936.

42. As a result of an employer deciding to exit the timber industry and of the creation of the new Community Conservation Area (CCA), mill workers and employees of a harvesting or haulage contractors who were employed by a timber business operating in the Brigalow Belt South and/or Nandewar region have been made redundant.

43. In order to assist the timber industry in the Brigalow Belt South and Nandewar regions adjust to changes brought about by the creation of the CCA, a one-off special redundancy payment of \$72,000 or \$27,000, made by the NSW Government under the BTWAF, has been made or is available to eligible workers whose employment was terminated in the timber industry.

44. In addition, an employer is liable to make redundancy payments and payments for relocation and/or training which are specified in any relevant industrial award/s or applicable industrial agreement/s.

45. It is clear from the facts provided, that the payment was made 'in consequence of' the termination of a taxpayer's employment. There is a direct causal connection between the termination of employment and the making of the payment. Had the termination of employment not occurred the payment would never have been made. Thus the payment was made 'in consequence of' the termination of the taxpayer's employment.

46. The payment of \$72,000 or \$27,000 is considered to be an ETP under paragraph (a) of the definition of 'eligible termination payment' in subsection 27A(1) of the ITAA 1936.

### **Bona fide redundancy payment**

47. A payment on the termination of employment is a bona fide redundancy payment (BFRP) if it satisfies all the requirements of section 27F of the ITAA 1936.

48. The first requirement under paragraph 27F(1)(a) of the ITAA 1936 is that the payment must be an ETP made in relation to the taxpayer in consequence of the dismissal from his or her employment by reason of bona fide redundancy.

49. There are three conditions that must be met to satisfy this requirement:

- the payment must be an ETP;
- it must be made in consequence of the dismissal of the taxpayer; and
- the dismissal must be because of redundancy.

50. As already noted above, the special redundancy payments are considered to be ETPs as they will be made in consequence of the termination of the eligible workers' employment.

51. The Commissioner of Taxation (the Commissioner) has issued Taxation Ruling TR 94/12 Income tax: approved early retirement scheme and bona fide redundancy payments, which sets out guidelines on the application of section 27F of the ITAA 1936.

52. Paragraphs 41 and 42 of TR 94/12 state that:

41. Redundancy can be described as the situation where an employer no longer requires employees to carry out work of a particular kind or to carry out work of a particular kind at the same location. Bray CJ in *R v. The Industrial Commission of South Australia; ex parte Adelaide Milk Supply Co-operative Ltd & Ors* (1977) 44 SAIR 1202 at page 1205; (1977) 16 SASR 6 at page 8 defined redundancy as follows:

'... a job becomes redundant when an employer no longer desires to have it performed by anyone. A dismissal for redundancy seems to be a dismissal, not on account of any act or default of the employee dismissed or any consideration peculiar to him, but because the employer no longer wishes the job the employee has been doing to be done by anyone.'

42. Redundancy refers to a job becoming redundant and not to an employee becoming redundant (*Short v. F W Hercus Pty Ltd* (1993) 40 FCR 511; (1993) 46 IR 128; (1993) 35 AILR 151). An employee's job is considered to be redundant if:

- an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by any one;
- that decision is not due to the ordinary and customary turnover of labour;
- that decision led to the termination of the employee's employment; and
- that termination of employment is not on account of any personal act or default of the employee.

53. It follows that redundancy is a situation where the dismissal of an employee is not caused by any consideration peculiar to the employee. Redundancy does not extend to a situation where an employee is dismissed for personal or disciplinary reasons or because the employee was inefficient or as a result of the ordinary and customary turnover of labour.

54. In this Ruling, the special redundancy payments made by the NSW Government from the BTWAF are payments made to workers in the timber industry for their displacement in the Brigalow Belt South and Nandewar region as a result of their employer deciding to exit the timber industry and of the creation of the CCA.

55. The taxpayers' positions were made redundant as supported by the facts that:

- the taxpayers' positions as mill workers and employees of a harvesting or haulage contractor were abolished by their employer;
- no one was employed to fill these positions as the positions were abolished; and
- the taxpayers were not dismissed for personal, disciplinary reasons, inefficiency reasons or as a result of the ordinary and customary turnover of labour.

56. In view of the above, the first requirement under paragraph 27F(1)(a) of the ITAA 1936, that the payment must be an ETP made in relation to the taxpayer in consequence of the dismissal from his or her employment by reason of bona fide redundancy has been satisfied.

57. The second requirement under paragraph 27F(1)(aa) of the ITAA 1936 is that the payment must not be made from an eligible superannuation fund. In this case, the payment was made by the NSW Government, not a superannuation fund, therefore this condition is satisfied.

58. Paragraph 27F(1)(b) of the ITAA 1936 requires that the termination time was a date before the taxpayer attained age 65 or such earlier date on which his or her employment would have necessarily terminated under the terms of employment because of the employee attaining a certain age or completing a certain period of service. None of the class of persons covered by this Ruling was aged 65 at the time of termination of employment, that is, their expected age of retirement. Therefore, this condition is satisfied.

59. Under paragraph 27F(1)(c) of the ITAA 1936 if the employer and the employees were not dealing with each other at arm's length in relation to the termination of employment, the amount of the eligible termination payment must not be greater than the amount that could reasonably be expected to have been paid if the parties had been at arm's length. In this case the employers and their employees were dealing with each other at arm's length. The amounts were determined and funded by the NSW Government, therefore this condition is satisfied.

60. The fifth requirement under paragraph 27F(1)(d) of the ITAA 1936 is that:

there was, at the termination time, no agreement between the employee and the employer, or the employer and another person, to employ the taxpayer after the termination time;...

61. In view of the above, and the other requirements having been satisfied, the issue of whether the payments of \$72,000 and \$27,000 made to the employees were BFRPs, hinges on whether an agreement to employ the employees existed between the two parties (that is, the employer of the timber workers and the NSW Government) at the time of termination of the employees' employment.

62. For taxation purposes, the term 'agreement' is broadly defined in subsection 27A(1) of the ITAA 1936 as:

Any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.

63. As indicated above, it is evident that for taxation purposes an agreement, and its associated terms, arrangement and understanding, is intended to have a very broad meaning and is not restricted to a legally enforceable agreement.

64. In applying the above definition and paragraph 27F(1)(d) of the ITAA 1936 to the employees' termination of employment, it has been ascertained there was no formal or express agreement between the employers and the NSW Government to employ the employees.

65. The delivery of workers assistance to eligible timber workers is provided through the Forestry Structural Adjustment Unit (FSAU) located within the NSW DNR.

66. The BTWAF provides a one off Special Redundancy Payment of \$72,000 where the applicant does not wish to seek an offer of alternate employment.

67. Applicants seeking alternate employment opportunities, and a one-off special redundancy payment of \$27,000 under the BTWAF are required to apply for permanent employment with Forests NSW and the Department of Environment and Conservation (DEC), by completing an expression of interest form from the FSAU.

68. Though no formal or express agreement existed between the parties (the employer and the NSW Government), the issue which needs to be determined is whether an implied agreement existed between the parties, for the employees seeking alternate employment opportunities, to be employed by Forests NSW and the DEC.

69. After taking into account the facts leading up to the dismissals it is viewed that there was no implied or inferred agreement between the parties for the NSW Government to employ employees of the timber mills. This is based on the BTWAF guidelines which state at clause 5.1:

- i) The Special Redundancy Payment of either \$72,000 or \$27,000 is a one off payment made by the NSW Government. This payment is in addition to a worker's statutory redundancy entitlements from their employer.

## 70. Furthermore it states at clause 5.2:

Alternate employment designated for workers who are eligible for assistance and apply for the assistance option described at 4.1ii) under the Brigalow Timber Workers Assistance Fund guidelines includes:

- i) Permanent employment with Forests NSW working on a new major cypress thinning project. These positions will be in the following areas...
- ii) Permanent employment with the Department of Environment and Conservation (DEC) as a Field Officer managing new conservation areas. These positions will be in the following areas...

The positions identified in at 5.2i) and 5.2ii) are designated for workers who are eligible for assistance under the Brigalow Timber Workers Assistance Fund and who apply for a one off Special Redundancy Payment of \$27,000 and retraining and relocation assistance.

Applicants seeking alternate employment under the Brigalow Timber Workers Assistance Fund should complete an Expression of Interest form, which is available from the FSAU. This will assist the FSAU, Forests NSW and DEC plan and manage the transition to alternate employment.

## 71. This is further supported by the BTWAF guidelines that state at clause 6:

- i) Those seeking access assistance under the Brigalow Timber Workers Assistance Fund should first contact the FSAU. Staff from the FSAU will be available to assist workers in the preparation of application forms.
- ii) All applications are to be submitted to the FSAU by 31 March 2006.
- iii) All applicants will be required to supply evidence of:
  - a) Their date of redundancy and reason for redundancy (such as a copy of their Employment Separation Certificate); and
  - b) Confirmation from their employer that they were permanently employed by their employer prior to and as at 4 May 2005; or
  - c) Confirmation from their employer that they were permanently employed in the 6 month period immediately prior to 4 May 2005 and left employment due to the Government's impending resource and conservation decision.

## 72. Displaced workers from Forests NSW were also given the opportunity for the positions identified at 5.1i) and 5.1ii). Therefore the positions were not restricted to mill workers and employees of a harvesting or haulage contractor.

73. Therefore, employees who were made redundant, as a result of their employer deciding to exit the timber industry due to the creation of the CCA, and were seeking alternate employment, were required to apply through an expression of interest process, to be considered for the permanent positions. These positions were being offered by the NSW Government some time after the employee had been made redundant.

74. Furthermore, even though the NSW Government may employ a number of the employees who were made redundant, it does not imply there was an agreement or understanding between the parties that the employees would be employed. Therefore, the final condition is satisfied.

75. Since all the requirements of section 27F of the ITAA 1936 are satisfied, so much of the ETP as exceeds the amount of an ETP that could reasonably be expected to have been made in relation to the employees had they voluntarily retired from their employment is a BFRP.

#### **Other relevant information**

76. The amount of a BFRP received by an employee that falls within the specified limits set under subsection 27A(19) of the ITAA 1936, called the 'tax-free amount', is exempt from income tax. The tax-free amount is not included on the taxpayer's tax return for the income year the payment was made.

77. The tax-free amount of a BFRP is defined in subsection 27A(19) of the ITAA 1936 as follows:

For the purposes of this Subdivision, the tax-free amount of a bona fide redundancy payment, or of an approved early retirement scheme payment, made during a year of income is so much of the payment as does not exceed:

- (a) if the year of income is the 1994-95 year of income – the amount worked out using the formula:  
$$\$4,000 + [\$2,000 \times \text{Years of service}]$$

where:  
"Years of service" means the number of whole years in the period, or the aggregate of the periods, of the employment to which the payment relates; or
- (b) if the year of income is a later year of income – the amount worked out using that formula subject to the indexation arrangements set out in subsection (20).

78. In discussing the meaning of years of service, the Explanatory Memorandum (EM) to the Taxation Laws Amendment Bill (No.2) 1992, which inserted subsection 27A(19), states:

The relevant period of completed service is the same as the period defined in paragraph (a) of the definition of eligible service period in subsection 27A(1). That is, the period, or aggregate of the periods, of the employment to which the payment relates. However, eligible service period is expressed in days, while the service period for subsection 27A (19) purposes is expressed in whole years.

79. Accordingly, 'years of service' means the same as the eligible service period, that is, the period, or the aggregate of the periods, of the employment to which the payment relates, subject to the stipulation that eligible service period is expressed in days, while years of service is expressed in whole years.

80. Taxation Ruling IT 2168 (IT 2168) provides guidelines to ascertain the eligible service period of a person receiving an ETP. Paragraph 4 of IT 2168 states:

Where an eligible termination payment (ETP) is made in consequence of the termination of a person's employment, the eligible service period is the period, or the aggregate of the periods, of the employment to which the ETP relates. Whether an ETP 'relates' to particular employment is a question of fact in each individual case. It is to be taken that the eligible service period is the person's total period of most recent continuous service with the employer making the payment (or contributing to the superannuation fund making the payment) and any related employer or employers (including any employer entity taken over by the employer or related employer or any entity in a sequence of takeovers ending with the takeover by the employer or related employer), **unless there is evidence that shows that the payment was made in recognition of a different period of employment.** (emphasis added)

81. According to Taxation Determination TD 2005/21, for the 2005-06 income year the tax-free amount of a BFRP is limited to \$6,491 plus \$3,246 for each whole year of completed employment service to which the BFRP relates. It should be noted that six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation. The \$6,491 and \$3,246 limits are indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings. Any amount that a person receives which falls below this limit will attract no tax, that is, such an amount will be tax-free.

82. Therefore, both the payments made to the class of employees from an employer and paid by the NSW Government from the BTWAF, are ETPs that relate to a particular employment. The tax-free amount of a BFRP is limited for each whole year of completed employment service to which the BFRP is made in that year of income.



83. Furthermore, the tax-free amount will:

- not be an eligible termination payment (ETP);
- not be able to be rolled-over;
- not include any amount from a superannuation fund or paid in lieu of a superannuation benefit; and
- not count towards the recipient's Reasonable Benefit Limit.

84. Any payment in excess of this limit is an ordinary ETP and split up into the pre-July 83 and post-June 83 (untaxed element) components. This ETP can be rolled-over.

## **Appendix 2 – Detailed contents list**

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85. The following is a detailed contents list for this Ruling:

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

IT 2168; TR 94/12; TR 2003/13;  
TD 2005/21

*Subject references:*

- bona fide redundancy payments
- eligible termination payments (ETPs)
- employment termination
- ETP components
- ETP pre July 1983 component
- ETP post June 1983 component

*Legislative references:*

- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- ITAA 1936 27A
- ITAA 1936 27A(1)
- ITAA 1936 27A(19)
- ITAA 1936 27A(20)
- ITAA 1936 27F
- ITAA 1936 27F(1)
- ITAA 1936 27F(1)(a)
- ITAA 1936 27F(1)(aa)
- ITAA 1936 27F(1)(b)
- ITAA 1936 27F(1)(c)

- ITAA 1936 27F(1)(d)

- Copyright Act 1968

*Case references:*

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NO: 2006/13299

ISSN: 1445-2014

ATOlaw topic: Income tax ~~ Assessable income ~~ eligible termination payments