# *CR 2026/48 - Australian Construction Industry Redundancy Trust - members in receipt of payments on termination of employment*

Status: **legally binding**

# Class Ruling

## Australian Construction Industry Redundancy Trust – members in receipt of payments on termination of employment

**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.

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### What this Ruling is about

1. This Ruling sets out the income tax consequences for employees who receive payments from ACIRT Pty Limited on the termination of their employment, under the terms of the consolidated trust deed of the Trustee (Trust Deed).

2. Details of this Scheme are set out in paragraphs 9 to 27 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

4. Capitalised terms in this Ruling take their meaning from the Trust Deed.

Note: by issuing this Ruling, the ATO is not endorsing this product. Potential participants must form their own view about the product.

### Who this Ruling applies to

5. This Ruling applies to you if you are an Employment Termination Payment (ETP) Member or a Genuine Redundancy Account (GRA) Member (collectively, the Members) who receives a payment on termination (Termination Amount) from ACIRT Pty Limited (Trustee) under the conditions of this Scheme.

### When this Ruling applies

6. This Ruling applies from 1 July 2025 to 30 June 2029.

Status: **legally binding**

# Ruling

### Payments that are assessable as employment termination payments

7. The following payments are assessable to the Members as an ETP:

- payments (of the balance of the Member Account) made to ETP Members
- payments (of the balance of the Member Account) made to GRA Members, where the termination is for a reason other than a genuine redundancy
- payments (of any part of the balance of the Member Account) that are in excess of the cap, made to GRA Members under pension age and where the termination is due to genuine redundancy
- payments (of the balance of the Member Account) made to GRA Members of pension age on termination of employment.

### Payments that are not assessable as employment termination payments

8. Where a payment (of the balance of the Member Account) is made to a GRA Member under pension age due to the termination of employment by reason of genuine redundancy, that portion of the payment which is under the cap amount worked out using the formula provided in subsection 83-170(3) is not assessable as an ETP. Such a payment will be assessable as a genuine redundancy payment.

# Scheme

9. 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.

10. The Australian Construction Industry Redundancy Trust (ACIRT) was established by the Trust Deed on 10 October 1994.

11. The Trust Deed has been amended from time to time, most recently on 29 August 2024.

### Purpose of the scheme

12. The Scheme under which the Trustee operates involves employers in the building and construction industry becoming participating employers under the ACIRT.

13. Participating employers are required to make weekly contributions to the ACIRT.

14. The amount of these contributions is either agreed with the Trustee or set out in the relevant industrial agreement or award, in order to meet their obligations under that agreement or award.

15. The Trustee credits these contributions to an account in the name of each relevant Member.

16. Upon termination of the Member's employment, the Trustee is required to make a payment of the Termination Amount, being the balance of the Member's account at the time of that termination.

17. Payment of the Termination Amount will be made on the termination of employment only where that termination of employment satisfies the requirements for each individual class of Member, being either an ETP Member or a GRA Member.

## Operation of awards, enterprise bargaining agreements and the trust deed

18. Clause 41 of the *Building and Construction General On-site Award 2020* (Award) sets out the entitlements to be paid upon an employee being made redundant. These entitlements are in accordance with those stipulated in the National Employment Standards.

19. Clause 41.4 of the Award provides for contributions to be made to a 'Redundancy Pay Scheme' and for those contributions to be offset against the legislative amounts that the employer would be required to pay upon the redundancy of the particular employee.

20. Clause 41.2 of the Award contains a definition of 'redundancy', being termination of employment for any reason other than misconduct or refusal of duty.

21. The Award provides for no entitlement to a payment where the employer contributes to a redundancy fund or trust. Entitlement to such a payment is determined by the ACIRT's rules only, which are contained in the Trust Deed.

22. The relevant enterprise bargaining agreement (EBA) generally provides for the contribution to the ACIRT of a specified amount per week per employee.

23. Entitlements to payment upon termination of employment are determined at the relevant time in accordance with the Trust Deed and offset against the redundancy entitlements under the particular EBA. Generally, these obligations mirror those contained in the National Employment Standards.

24. However, the ACIRT only pays benefits in accordance with the terms of the Trust Deed.

25. Any statutory entitlements provided for in an award or EBA outside those provided in the Trust Deed will not be paid by the ACIRT and, as such, will need to be paid by the relevant participating employer.

## Proposed amendments to the trust deed

26. The Trustee proposes amendments to the current Trust Deed for the purpose of varying the ACIRT's operating model, including making changes to the conditions for eligibility for a Member to receive a payment from the ACIRT.

27. As a result of the proposed amendments:

- Upon a future Member account being opened with the ACIRT, the Member will be designated as a 'GRA Member'.
- Existing Members will, upon the date of commencement, be designated as GRA Members.
- GRA Members will be permitted to be paid a Termination Amount in the following circumstances (under Clause 19.2(a) and the definition of GRA Termination Event in clause 1.1 of the Trust Deed)
  - GRA Members who have not yet reached their Pension Age will be entitled to receive a Termination Amount in consequence of the

termination of their employment for any reason, excluding the voluntary termination of their employment

  - GRA Members who have reached Pension Age will be entitled to receive a Termination Amount in consequence of the termination of their employment for any reason.

- GRA Members will be permitted to make an irrevocable election to become an 'ETP Member' under Clause 5.1B of the Trust Deed.
- ETP Members will only be permitted to receive a Termination Amount in consequence of the voluntary termination of their employment, including by resignation, or due to death or Total and Permanent Disablement (as defined) under Clauses 1.1 and 19.2(b) of the Trust Deed.

**Commissioner of Taxation**
5 August 2026

# Appendix – Explanation

***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.***

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## Employment termination payments

28. Section 12-85 of Schedule 1 to the *Taxation Administration Act 1953* states that an entity must withhold an amount from a payment it makes to an individual where that payment is an ETP or would be one except that it is received more than 12 months after the termination of employment.

29. Subsection 995-1(1) states that '***employment termination payment*** has the meaning given by section 82-130'.

30. 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.

31. In order for a payment to constitute an ETP, all the conditions in subsection 82-130(1) need to be satisfied.

32. Failure to satisfy any of the conditions will result in the payments not being considered ETPs. Furthermore, any termination payments received outside of the 12 months are taxed as ordinary income at marginal tax rates, unless the taxpayer is covered by a determination exempting them from the 12-month rule.

### *Payment received in consequence of the termination of employment*

33. The phrase 'in consequence of' is not defined in the ITAA 1997. However, the courts have interpreted the phrase in several cases.

34. The High Court considered the expression 'in consequence of the termination of [any] employment' in *Reseck v Commissioner of Taxation* [1975] HCA 38. Gibb J interpreted the meaning of the phrase as (emphasis added):

> 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.

35. Taking into account the courts' decisions on the meaning of the phrase, our view on the meaning and application of the 'in consequence of' test is set out in 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'*.

36. Paragraphs 5 and 6 of TR 2003/13 state that:

> … [T]he 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.
>
> 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.

### Payments

37. Under Clause 19.2 of the Trust Deed, upon the occurrence of a Termination Event (being either a GRA Termination Event or an ETP Termination Event), a Member (being either an ETP Member or a GRA Member) or a person claiming through, or under, such a Member will be entitled to the payment of the Termination Amount, being the amount standing in the Member's account.

38. Clause 1.1 of the Trust Deed provides the following relevant definitions:

> **"Termination Event"** means any termination of employment, other than where clause 17.1(a) applies;
>
> **"GRA Termination Event"** means the termination of the Members employment for any reason excluding the voluntary termination of the Member employment prior to the Member attaining the Pension Age;
>
> **"ETP Termination Event"** means the voluntary termination of the Member's employment or termination due to death or the Member suffering Total and Permanent Disability;

> **"Termination Amount"** means the balance of amount standing to the Member Account of the Member;
>
> **"Off the Tools"** means a change in employment that is not a termination of employment whereby the Member is no longer employed in a position that is covered by an Award or Enterprise Agreement that provides for contribution to be made to an Approved Worker Entitlement Fund;

39. It is clear from the wording of the proposed amendments to the Trust Deed that the entitlement to the payment (of the Termination Amount) crystallises upon either a change of employment or a termination of employment. However, the definition of 'Off the Tools' makes it clear that, while meeting this requirement results in payment of the Termination Amount, it does not constitute the termination of employment.

40. It is clear that any Termination Event, whether GRA or ETP, represents the termination of employment of the relevant Member.

41. In other words, but for the termination of their employment, the Member would not have received the payment of the Termination Amount. Where a Termination Event has occurred, it is that Termination Event that is the necessary precondition for the payment to be made and received.

42. As such, there exists a causal connection between the termination of employment and the receipt of the payment (of the Termination Amount) by the Member.

43. As such, such payments are received by the respective Members 'in consequence of' the termination of their employment.

### *Payment received no later than 12 months after termination*

44. Paragraph 82-130(1)(b) requires that the payment must be received no later than 12 months after the termination of employment.

45. Subsection 82-130(4) provides that the time limit does not apply where the recipient is covered by a determination made by the Commissioner under subsections 82-130(5) or (7).

46. Subsection 82-130(5) states that the Commissioner may determine paragraph 82-130(1)(b) does not apply if the time between the termination and the payment is reasonable, having regard to the following:

- the circumstances of the termination, including any dispute in relation to it
- the circumstances of the payment
- the circumstances of the person making the payment
- any other relevant circumstances.

47. Subsection 82-130(7) states that the Commissioner may determine, by legislative instrument, that paragraph 82-130(1)(b) does not apply to a class of payments or a class of recipients of payments.

48. We have issued *Income Tax: Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2019* (ETP 2019/1) in relation to this matter.

49. Section 5 of ETP 2019/1 provides that paragraph 82-130(1)(b) does not apply to a 'late termination payment', as defined by that instrument, if:

a) the person whose employment was terminated was a member of a redundancy trust and an application for the payment was lodged with the trustee of the redundancy trust within 12 months of the person becoming entitled to the payment under the terms of the trust deed of the redundancy trust; and

b) the payment was made by the trustee of the redundancy trust:

(i) as soon as practicable after receipt of the application for payment; or

(ii) no later than 2 years after the termination of the person's employment that led to the entitlement;

whichever occurs earlier.

50. Section 6 of ETP 2019/1 further provides that 'redundancy trust' means:

(a) a fund that:

(i) is endorsed as an approved worker entitlement fund under subsection 58PB(3) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA); or

(ii) the entity that operates the fund is endorsed for the operation of the fund under subsection 58PB (3A) of the FBTAA; or

(b) a fund that, just before 28 June 2011, was an approved worker entitlement fund under subsection 58PB(2) of the FBTAA.

51. The Trust Deed contains the following relevant definition:

> **"Approved Worker Entitlement Fund"** means an approved worker entitlement fund within the meaning of section 58PB of the Fringe Benefits Tax Assessment Act 1986.

52. The Scheme is an approved worker entitlement fund. As such, it meets the definition of 'redundancy trust' under ETP 2019/1.

53. This means that paragraph 82-130(1)(b) will not apply to a late termination payment, as defined under ETP 2019/1, if:

- an application is lodged with the trustee of the Scheme within 12 months of the Member becoming entitled to the Termination Amount under the terms of the Scheme's Trust Deed, and
- the payment is made by the Trustee as soon as practicable after receipt of the application for payment or no later than 2 years after the termination of the Member's employment that led to the entitlement to the Termination Amount, whichever occurs earlier.

54. We accept the 2 points in paragraph 53 of this Ruling, meaning that subsection 82-130(1) does not apply to the payment of the Termination Amount where it is made later than 12 months after the termination of employment.

### *Not a payment mentioned in section 82-135*

55. Section 82-135 provides that certain payments are not ETPs, including:

- unused annual leave and unused long service leave payments
- genuine redundancy and early retirement scheme payments up to the tax-free limit
- capital payments for personal injury as compensation for an inability to be employed.

56. In this case, the applicant has asked us to accept that (before paying the Termination Amount) they will satisfy themselves (on a reasonable basis) upon the receipt

of sufficient evidence that the Member's employment has been terminated in the manner claimed, whether that be voluntary termination, death, permanent incapacity or genuine redundancy.

57. Depending on whether the relevant Member is an ETP Member or a GRA Member, and referencing the relevant Termination Event, the payment of the Termination Amount (being the balance of the Member's account) will only be received by Members upon voluntary termination, death, permanent incapacity or genuine redundancy.

58. Under the terms of the Trust Deed, payments made to Members are not excluded by section 12-35 of Schedule 1 to the *Taxation Administration Act 1953* (with the exception of the amount payable to GRA Members upon termination due to genuine redundancy).

59. Accordingly, all payments of the Termination Amount made to Members will be considered to be ETPs (with the exception of tax-free amounts of genuine redundancy payments made to GRA Members).

60. ETPs have up to 3 tax treatments:

- tax-free, if part of the payment is for invalidity, or work done before 1 July 1983
- concessionally taxed up to a certain limit, known as a cap
- taxed at the top marginal rate of 47% on the amount over the relevant cap.

## Genuine redundancy payments

61. Section 82-135 provides that certain payments are not ETPs.

62. Paragraph 82-135(e) excludes from an ETP the part of a genuine redundancy payment worked out under section 83-170.

63. Section 83-175 defines a genuine redundancy payment. That section identifies:

- the conditions that must be satisfied for at least part of a payment to be treated as a genuine redundancy payment
- how to work out what amount of the payment is a genuine redundancy payment, and
- what payments are excluded from being a genuine redundancy payment.

64. A payment made to an employee is a genuine redundancy payment if it satisfies all the conditions set out in subsections 83-175(1) to (3). These subsections state:

> (1) A ***genuine redundancy payment*** is so much of a payment received by an employee who is dismissed from employment because the employee's position is genuinely redundant as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the dismissal.
>
> (2) A ***genuine redundancy payment*** must satisfy the following conditions:
>
> (a) the employee is dismissed before the earlier of the following:
>
> (i) the day the employee reached pension age;
>
> (ii) if the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service – the day he or she would reach the age or complete the period of service (as the case may be);

(b) if the dismissal was not at arm's length – the payment does not exceed the amount that could reasonably be expected to be made if the dismissal were at arm's length;

(c) at the time of the dismissal, there was no arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the dismissal.

(3) However, a ***genuine redundancy payment*** does not include any part of a payment that was received by the employee in lieu of superannuation benefits to which the employee may have become entitled at the time the payment was received or at a later time.

65. Accordingly, for a payment to be a genuine redundancy payment, subsection 83-175(1) requires the payment to:

- be received by an employee who is dismissed because their position is genuinely redundant, and
- exceed the amount that could reasonably be expected to be received by the employee if their employment was terminated voluntarily at that time.

66. Taxation Ruling TR 2009/2 *Income tax: genuine redundancy payments* outlines the requirements to be satisfied before any payment made to a person whose employment is terminated qualifies for treatment as a genuine redundancy payment under section 83-175.

67. Paragraph 11 of TR 2009/2 states:

> There are four necessary components within this requirement:
>
> - The **payment** being tested must be **received *in consequence* of an employee's termination**.
> - That termination must involve the employee being **dismissed from employment**.
> - That dismissal must be **caused by** the **redundancy** of the employee's position.
> - The redundancy payment must be made **genuinely** because of a redundancy.

### *Component 1 – payment 'in consequence of' termination*

68. As stated in paragraph 43 of this Ruling and consistent with our view in TR 2003/13, the termination of employment is a necessary precondition for the payment to be made.

### *Component 2 – 'dismissal' from employment*

69. A genuine redundancy arises where there is no suitable job available for the employee with the employer, resulting in the employee's dismissal.

70. Dismissal requires a decision to terminate employment at the employer's initiative without the consent of the employee.

71. Determining whether an employee has consented to their termination requires an assessment of the facts and circumstances of each case.

### *Component 3 – dismissal caused by ‘redundancy’*

72. Section 83-175 further requires that the dismissal be caused by redundancy of the employee’s position and not for some other reason.

73. The reason for a dismissal is to be established in light of the facts and circumstances of each case.

### *Component 4 – ‘genuine’ redundancy*

74. Contrived cases of redundancy will not meet the conditions in section 83-175. Whether a redundancy is ‘genuine’ is determined on an objective basis.

75. The fact that an employer and employee have an understanding that a payment on termination is caused by redundancy or that the employer treats the payment as a redundancy payment for tax purposes does not of itself establish genuine redundancy.

76. Regarding components 2, 3 and 4 (listed in paragraph 67 of this Ruling), the applicant has requested that we make an assumption that the Trustee will (before paying the Termination Amount) receive sufficient evidence to satisfy itself (on a reasonable basis) that the employment of the Member has been terminated in the manner claimed, *including* where that claim is in relation to a genuine redundancy.

77. We agree to make this assumption.

### Additional requirements

78. In addition to the basic requirement for a genuine redundancy payment found in subsection 83-175(1), the further conditions for genuine redundancy payment treatment in subsections 83-175(2) and (3) require that:

- the dismissed employee is not older than the specified age limits
- the termination is not at the end of a fixed period of employment
- the actual amount paid is not greater than the amount that could reasonably be expected had the parties been dealing at arm’s length, in the event that the employer and employee are in fact not dealing at arm’s length in relation to the dismissal
- there is no arrangement entered into between the employer and employee or the employer and another entity to employ the dismissed employee after the termination, and
- the payment is not in lieu of superannuation benefits.

### *Age-based limits*

79. Under paragraph 83-175(2)(a), an employee must be less than the pension age at the time of dismissal for a redundancy payment to qualify as a genuine redundancy payment.

80. The Trust Deed defines ‘Pension Age’ as having the meaning provided by subsection 995-1(1).

81. Pension age is defined in subsection 995-1(1) as having ‘… the meaning given by subsection 23(1) of the *Social Security Act 1991*.’

82. Subsection 23(1) of the *Social Security Act 1991* defines pension age as 'having the meaning given by subsections (5A), (5B), (5C) and (5D)'.

83. Subsections 5A, 5B, 5C and 5D of the *Social Security Act 1991* provide that the pension age for both men and women, born on or after 1 January 1957, is 67 years of age.

84. The applicant has requested that we make an assumption that the Trustee will, prior to making a payment of the Termination Amount, satisfy itself on a reasonable basis of the Member's age.

85. We agree to make this assumption.

### *Not the end of a particular period of employment*

86. Under subparagraph 83-175(2)(a)(ii), a payment made at the end of a fixed period of employment cannot normally be a genuine redundancy payment.

87. The applicant has asked us to make an assumption that there exists no agreement or arrangement under which the Member's employment would be terminated when they completed a particular period of service.

88. We agree to make this assumption.

### *Arm's length amount*

89. This condition only needs to be met if it is established that the employer and employee are not dealing at arm's length in relation to the dismissal.

90. The applicant has asked us to make an assumption that the Member and the Employer dealt with each other at arm's length in relation to the termination of the Member's employment or otherwise the Payment does not exceed the amount that could reasonably be expected to be made if the termination was at arm's length.

91. We agree to make this assumption.

### *No stipulated arrangement to employ*

92. Under paragraph 83-175(2)(c), an arrangement to employ an employee after their termination prevents a dismissal giving rise to a genuine redundancy payment if that arrangement is entered into between either:

- the employer and the dismissed employee, or
- the employer and another entity.

93. The applicant has asked us to make an assumption that there exists no agreement or arrangement to employ the Member after the termination of their employment.

94. We agree to make this assumption.

### *Payments not in lieu of superannuation benefits*

95. Under subsection 83-175(3), a payment is not a genuine redundancy payment to the extent that it is made in place of superannuation benefits due at the time or in the future.

96. The applicant has stated that, under the Trust Deed, no amount is paid in lieu of superannuation benefits to which the Member may have become entitled at the time the payment was received or at a later time.

### Amount of redundancy payment

97. The other requirement under subsection 83-175(1) is that the payment exceeds the amount that could reasonably be expected to be received by the employee if their employment was terminated voluntarily at that time.

98. Accordingly, for subsection 83-175(1) to apply, it must be demonstrated that the payment is, or includes, an amount which exceeds what the Member could reasonably be expected to receive in consequence of the voluntary termination of their employment at the time of dismissal.

99. We consider the application of subsection 83-175(1) in TR 2009/2.

100. The term 'voluntary termination', as utilised in subsection 83-175(1), is not defined in the ITAA 1997. The terms 'dismissal' and 'redundancy', in the context of that subsection, are discussed in TR 2009/2 at paragraphs 18 and 25, which sets out:

> 18. Dismissal is a particular mode of employment termination. It requires a decision to terminate employment at the employer's initiative without the consent of the employee. This stands in contrast to employment that is terminated at the initiative of the employee, for example in the case of resignation.
>
> …
>
> 25. An employee's position is redundant when an employer determines that it is superfluous to the employer's needs and the employer does not want the position to be occupied by anyone. Accordingly, it is fundamentally the employer's decision that a position is redundant. On occasion the decision may be unavoidable due to the circumstances surrounding the employer's operations.

101. Having regard to the ordinary definitions of 'voluntary' and 'termination', it could be said that 'voluntary termination' refers to a member ending their employment because of their own choice or on their own accord. Most notably, this would include resignation and retirement.

102. Accordingly, what must be determined in this case is whether a payment, or part thereof, made by the Trustee to a Member due to genuine redundancy is in excess of what would be paid under voluntary termination at the time of dismissal, such that the payment or part thereof should be treated as a genuine redundancy payment under subsection 83-175(1).

103. The calculation of the amount payable under voluntary termination needs to have regard to the terms of the Trust Deed, any relevant industrial award, any relevant workplace agreement or any other terms or conditions which could provide a basis for a payment under a voluntary termination.

104. The applicant has asked us to make an assumption that the respective EBAs under which each of the Members is employed do not entitle those Members to any payments upon the voluntary termination of their employment other than, and in addition to, an entitlement to a payment in respect of a notice period, the payment of accrued unpaid entitlements or both (for example, accrued annual leave).

105. We are willing to make this assumption.

106. The Trust Deed refers to payments of the balance of the Member account being paid only (other than in the case of an 'Off the Tools' payment, which is not made on the

termination of employment) as a result of a Termination Event. In the case of a GRA Member, a Termination Event is defined as 'the termination of the Members (sic) employment for any reason excluding the voluntary termination of the Member employment prior to the Member attaining the Pension Age'.

107. As such, the amount that could reasonably be expected to be received by a GRA Member in consequence of the voluntary termination of their employment is nil.

108. Under Clause 5.1B of the Trust Deed, GRA Members may elect to become ETP Members, as follows:

> **5.1B Member may elect to be an ETP Member**
>
> 5.1B.1 A Member may, at any time, by written notice to the Trustee in such form (if any) as the Trustee approves, elect to become an ETP Member.
>
> 5.1B.2 An election made under Clause 5.1B.1 is irrevocable.

109. However, from the date of the election, such Members (as they are now ETP Members) would only be entitled (in terms of payment of the Termination Amount on the occurrence of a Termination Event) to the payment on 'the voluntary termination of the Member's employment or termination due to death or Total and Permanent Disablement'. ETP Members have no entitlement to a payment on genuine redundancy.

110. Similarly, if a Member's employment is terminated due to a genuine redundancy, their entitlement to the payment of the Termination Amount will be determined by whether they are a GRA Member or ETP Member at that point in time, as follows:

- If the Member is a GRA Member, they will be entitled to the payment of the Termination Amount, which is the amount standing in the Member's account.
- If the Member elected to become an ETP Member, they will not be entitled to the payment of the Termination Amount, or to any payment whatsoever.

111. As GRA Members are not entitled to payment in the case of voluntary termination (under Pension Age) but are entitled to payment due to genuine redundancy, the amount they receive is in excess of the amount they could reasonably expect to receive upon the voluntary termination of their employment.

112. As such, the amount of this payment (up to the tax-free cap) is not assessable income or exempt income of the Member.

Note: where the GRA Member has reached Pension Age, the payment will be taxable as an ETP, as the requirements of a genuine redundancy would not have been met.

Status: **not legally binding**

# References

*Related rulings and determinations*:
TR 2003/13; TR 2009/2

*Legislative references:*
- ITAA 1997 82-130
- ITAA 1997 82-130(1)
- 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 82-135(e)
- ITAA 1997 83-170
- ITAA 1997 83-170(3)
- ITAA 1997 83-175
- ITAA 1997 83-175(1)
- ITAA 1997 83-175(2)
- ITAA 1997 83-175(2)(a)
- ITAA 1997 83-175(2)(a)(ii)
- ITAA 1997 83-175(2)(c)
- ITAA 1997 83-175(3)
- ITAA 1997 995-1
- SSA 1991 5A
- SSA 1991 5B
- SSA 1991 5C
- SSA 1991 5D
- SSA 1991 23(1)
- TAA 1953 Sch 1 12-35
- TAA 1953 Sch 1 12-85

*Cases relied on:*
- *Reseck v Commissioner of Taxation* [1975] HCA 38; 133 CLR 45; 75 ATC 4213; 1975 6 ALR 642; 49 ALJR 370

*Other references:*
- *Income Tax: Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2019*

ATO references

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|---|---|
| NO: | 1-1ADPPWI8 |
| ISSN: | 2205-5517 |
| BSL: | SEO |
| ATOlaw topic: | Income tax ~~ Assessable income ~~ Employment related ~~ Employment termination payments |