



**Australian Government**  
**Australian Taxation Office**

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## Employment Termination Payments (12 month rule) Legislative Instrument 2007

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I, IAN CHARLES READ, Acting Deputy Commissioner of Taxation, make this determination under subsection 82-130(7) of the *Income Tax Assessment Act 1997*.

**Ian Read**

Acting Deputy Commissioner of Taxation

Dated: 12 November 2007

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**1. Name of Determination**

This determination is the *Employment Termination Payments (12 month rule) Determination 2007*.

**2. Commencement**

This determination commences on the day after it is registered.

**3. Application**

This determination applies to a payment received after 30 June 2007 by a person if the payment is received:

(a) either

- i) in consequence of the termination of that person's employment, or
- ii) after another person's death, in consequence of the termination of that other person's employment; and

(b) more than 12 months after that termination; and

(c) is not a payment under section 82-135 of the *Income Tax Assessment Act 1997*.

In this determination, such a payment is called a **late termination payment**.

**4. Determination**

Paragraph 82-130(1)(b) of the *Income Tax Assessment Act 1997* does not apply to a late termination payment if the payment is received more than 12 months after the termination of a person's employment because:

- (a) legal action was commenced within 12 months of the termination of employment, of which the subject is either or both:

- i) the person's entitlement to the payment;
- ii) the amount of the person's entitlement; or
- (b) the payment was made by a liquidator, receiver or trustee in bankruptcy of an entity that is otherwise liable to make the payment, where that liquidator, receiver or trustee is appointed no later than 12 months after the termination of employment.

## 5. Definitions

In this Determination:

**'liquidator'** means a person who becomes a liquidator of a company and who has given the Commissioner of Taxation notice of that fact under subsection 260-45(2) of Schedule 1 to the *Taxation Administration Act 1953*.

**'receiver'** means a person who, in the capacity of receiver, or of receiver and manager, takes possession of a company's assets for the company's debenture holders and who has given the Commissioner of Taxation notice of that fact under subsection 260-75(2) of Schedule 1 to the *Taxation Administration Act 1953*.

**'trustee in bankruptcy'** means a person who, in the capacity of 'the trustee' as defined in section 5 of the *Bankruptcy Act 1966*, notifies the Commissioner of Taxation of the bankruptcy.