

***ETP 2018/1 -***



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## Legislative Instrument

### Income Tax Employment Termination Payments (12 month rule) Determination 2018

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I, **James O'Halloran**, Deputy Commissioner of Taxation, make this determination under subsection 82-130(7) of the *Income Tax Assessment Act 1997*.

**James O'Halloran**

Deputy Commissioner of Taxation

Dated: 7 December 2017

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#### 1. Name of Instrument

This determination is the *Income Tax Employment Termination Payments (12 month rule) Determination 2018*.

#### 2. Commencement

This instrument is taken to have commenced on the day after it is registered on the Federal Register of Legislation.

#### 3. Application

This determination applies to a payment received, after the date that this instrument is registered on the Federal Register of Legislation, 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. Repeal of previous determination

This determination replaces *Employment Termination Payments (12 month rule) Determination 2007 F2007L04372* (the previous determination) registered on 16 November 2007. The previous determination is repealed on commencement of this determination.

## 5. Determination

This determination is made in accordance with Paragraph 82-130(7) of the *Income Tax Assessment Act 1997* (ITAA 1997).

Paragraph 82-130(1)(b) of the ITAA 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.

## 6. 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.