

***ETP 2019/1 -***



Australian Government

Australian Taxation Office

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## Legislative Instrument

# Income Tax: Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2019

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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: 4 March 2019

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### 1. Name of determination

This determination is the *Income Tax: Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2019*.

### 2. Commencement

This determination 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 by a person, after the date that this determination is registered on the Federal Register of Legislation, if the payment is received from a redundancy trust:

- (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* (ITAA 1997).

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

#### 4. **Repeal of previous determination**

This determination replaces *Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2009* (F2009L00716) registered on 12 March 2009. The previous determination is repealed on commencement of this determination.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 ITAA 1997.

Paragraph 82-130(1)(b) of the ITAA 1997 does not apply to a late termination payment 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.

#### 6. **Definitions**

In this Determination:

**'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.

**'member of a redundancy trust'** means a person who is entitled to a payment/s under the terms of the redundancy trust's deed due to termination of employment.