

Leave and termination payments

Termination payments may become payable as a result of cessation of employment for any reason with any one employer. These payments can be classified into two categories:

1. Ordinary Termination Payments
2. Employment Termination Payments (ETPs)

Ordinary Termination Payments

These include the following payments:

- Leave payments including long service leave, annual leave and associated leave loading
- The tax-free portion of a genuine redundancy or approved early retirement scheme. For the 2011/12 financial year, this is \$8,435 plus \$4,218 for each completed year of service
- A lump sum payment for personal injury
- Payment from a non-complying superannuation or rollover fund that has always been a non-complying fund (non-complying funds do not benefit from the taxation concessions).

These payments are not classified as ETPs and therefore cannot be rolled over into superannuation. Taxation on these payments cannot be altered or reduced in any way. However, the net after-tax value of these payments can generally be contributed to a superannuation fund (as a personal or spouse contribution), noting there are thresholds to how much you can put in.

The most common form of ordinary termination payments is leave payments for accrued annual leave and long service leave. A lump sum payment in lieu of unused annual or long service leave in consequence of termination of employment may, in certain circumstances, be subject to concessional tax treatment. This may limit the maximum rate of tax payable on all or certain parts of the payment. The table below sets out the applicable rates of tax for the 2011/12 financial year.

Annual leave		
Reason for employment termination		Tax treatment
For general retirement or termination	Leave accrued to 17 August 1993	100% included in assessable income and taxed at a maximum rate of 30%*
	Leave accrued from 18 August 1993	100% included in assessable income and taxed at a person's marginal tax rate*
Genuine redundancy, approved early retirement or invalidity		100% included in assessable income and taxed at a maximum rate of 30%*

*plus Medicare levy

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Long service leave		
Reason for employment termination		Tax treatment
For general retirement or other termination (such as resignation)	Leave accrued to 15 August 1978	5% included in assessable income and taxed at a person's marginal tax rate*
	Leave accrued 16 August 1978 to 17 August 1993	100% included in assessable income and taxed at a maximum rate of 30%*
	Leave accrued from 18 August 1993	100% included in assessable income and taxed at a person's marginal tax rate*
Genuine redundancy, approved early retirement or invalidity	Leave accrued to 15 August 1978	5% included in assessable income and taxed at a person's marginal tax rate*
	Leave accrued from 16 August 1978	100% included in assessable income and taxed at a maximum rate of 30%*

*plus Medicare levy

Employment Termination Payments

Examples of Employment Termination Payments include:

- Payments for unused sick leave
- Golden handshakes or ex-gratia payments
- Payments in lieu of notice
- Payments for unused rostered days off
- The part of a genuine redundancy or approved early retirement scheme in excess of the tax-free portion.

Employment Termination Payments made after 1 July 2007, (other than those made under the transitional arrangements) can not be directly contributed or rolled over into superannuation.

Transitional termination payments

Transitional arrangements apply if, as at 9 May 2006, you were entitled to a payment made on the termination of employment under:

- A written contract
- An Australian or foreign law (or an instrument under such a law) or
- A workplace agreement under the Workplace Relations Act 1996.

These documents must refer to the amount of the payment or a method or formula to work it out. It may allow you to choose how the payment is made – for example, as a payment made in kind, such as shares.

You will need to confirm with your employer whether transitional rules apply in your circumstances.

You may elect for a transitional termination payment to be rolled over into superannuation (subject to a work test if you are 65 years or over) until 30 June 2012. No Employment Termination Payments can be rolled over into superannuation after this date.

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Taxation of employment termination payments

Employment termination payments comprise two components:

(1) Tax-free component

If applicable this component, will comprise of a pre-July 83 segment and an invalidity segment (previously the post-June 94 invalidity component). The formula used to calculate these components will not change. The tax-free portion is always tax-free and is non-assessable and non-exempt income.

(2) Taxable component

The taxable component will be the total payment less the tax-free component.

	Age	Tax treatment of taxable portion
ETP	Under preservation age (PA) [^] on the last day of the income year in which the payment is made	First \$165,000 [#] - 30%* Excess over \$165,000 [#] - highest marginal tax rate*
	Over PA on the last day of the income year in which the payment is made	First \$165,000 [#] - 15%* Excess over \$165,000 [#] - highest marginal tax rate*
Transitional ETP – cashed in prior to 1/7/2012	Under PA on the last day of the income year in which the payment is made	First \$1 million ⁺ - 30%* Excess over \$1 million ⁺ - highest marginal tax rate*
	Over PA on the last day of the income year in which the payment is made	First \$165,000 [~] - 15%* \$165,000 [~] to \$1 million ⁺ - 30%* Excess over \$1 million ⁺ - highest marginal tax rate*
Transitional ETP – rolled over prior to 1/7/2012	Any age	15% contributions tax

[^] Preservation age is 55 for persons born before 1 July 1960 and increases in yearly steps to 60 for those born after 30 June 1964.

* Plus Medicare levy.

[#] Employment terminations payment cap for the 2011/12 financial year: This is a yearly limit and is indexed (in \$5,000 increments) in line with AWOTE on 1 July each year. Amounts received under this cap are not counted towards the low rate cap on superannuation member benefits.

⁺ Upper cap for the 2011/12 financial year: This is not indexed. The \$1 million upper cap is reduced by the taxable component of all other transitional employment termination payments received (including those taken in cash).

[~] Lower cap for the 2011/12 financial year applying to all transitional termination payments received during the transitional period. This is indexed (in \$5,000 increments) in line with AWOTE on 1 July each year.

Please note: All ETPs rolled over will be preserved and cannot be accessed until another condition of release is met.

Need further information?

If you would like further information or the address of your local branch, please visit our website at www.lgssuper.com.au or contact Member Services on **1300 369 901** between 8.30am and 5pm on any business day.