Taxation of termination payments

How to calculate and report the tax on an ETP and other payments when an employee's employment is terminated.

Last updated 20 June 2024

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An overview of eligible termination payment lump sums.

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Payments to employees

An overview of eligible termination payment lump sums.

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Employees can be paid several types of 'lump sums' that are taxed and reported differently to normal income. A lump sum is a one-time payment, usually provided to the employee, instead of recurring payments over a period of time.

An employment termination payment (ETP) is one of these lump sums. This is known as a 'life benefit ETP' when it’s paid to an employee. If the employee has died, a 'death benefit ETP' is paid to their estate.

The steps below help you work out:

1. Which payments to include in the employee's ETP
    - ETPs can include payments such as gratuities and severance pay. They do not include payments for accrued annual leave or the tax-free part of genuine redundancy payments.
2. Payments for accrued annual and long service leave
    - These payments are **not** part of the employee's ETP. However, the payments may receive concessional tax treatment.
3. The tax-free amount if the termination is because of a genuine redundancy or early retirement scheme
    - Payments for these types of termination are tax-free up to a certain limit. The tax-free amount is not part of the employee's ETP.
4. If any of the ETP is tax-free
    - An ETP has a tax-free component. If part of the payment is for invalidity or work done before 1 July 1983, you don't withhold tax from this component.
5. How much of the ETP is taxed at a concessional rate
    - ETPs are concessionally taxed up to a certain limit or 'cap'. There are two caps. Which cap applies depends on the type of payment.
6. The amount to withhold and how to complete the Income statement if you are reporting through Single Touch Payroll (STP) or payment summary
    - You withhold tax from the taxable component of the ETP at concessional rates up to the applicable cap, and at the highest

marginal rate for amounts above the cap.

A payment must generally be made **within 12 months of termination** to qualify as an ETP and receive concessional tax treatment. Otherwise, the payment is part of the recipient's assessable income and is taxed at their marginal rate.

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Informing your employees

Information you can give to your employees to help them understand eligible termination payments.

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Employment termination payments – for employees explains:

- how termination payments are taxed
- how the caps work, including the tax implications for employees who are subject to the whole-of-income cap
- what employees need to do with their *income statements* or *payment summaries* and how to report these payments on their tax return.

You can provide this information to employees with your letter of offer or *pay as you go (PAYG) payment summaries*.

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Payments that are ETPs

Use the lists below to work out which payments to include in the employee's ETP.

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Payments to include in employee's ETP:

- a gratuity or golden handshake
- **genuine redundancy or early retirement scheme payments above the tax-free limit**
- severance pay
- **non-genuine redundancy**
- payments in lieu of notice of termination
- unused rostered days off (RDOs)
- unused sick leave
- compensation for loss of job
- compensation for wrongful dismissal, as long as it is paid within 12 months of the actual termination of employment
- payments for loss of future super payments
- payments arising from an employee's termination because of ill health (**invalidity**), other than compensation for personal injury
- lump sum payments paid on the death of an employee

Payments not included in employee's ETPs:

- **accrued leave** payments for unused annual leave and long service leave
- **genuine redundancy or early retirement scheme payments up to the tax-free limit**
- salary, wages, allowances, bonuses and incentives owing to the employee for work done or leave already taken
- super benefits (for example, a lump sum or income stream from a super fund)
- foreign termination payments

- certain payments for restraint of trade
- certain payments for personal injury if the employee is compensated for their inability to be employed
- employee share scheme payments
- an advance or loan

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Accrued leave

Learn what type of leave is not included in eligible termination payments and how this leave is treated.

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Lump sum payments for unused annual leave and long service leave are not part of the employee's ETP. They are separately recorded on either the employee's:

- *income statement* at lump sum A or B
- *PAYG payment summary – individual non-business*.

These payments may be concessionally taxed. The tax rate depends on the type of termination, date of accrual and type of leave.

Next step:

- Work out the amount to withhold and which lump sum category to use – Schedule 7 – Tax table for unused leave payments on termination of employment.

For more information see:

- PAYG payment summary – individual non-business

- Single Touch Payroll Phase 1 – what you need to report
- Single Touch Payroll Phase 2 – payments you must report.

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Redundancy and early retirement

Find out about genuine redundancy, early retirement scheme payments and reporting the tax-free amounts.

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Tax free amounts

Genuine redundancy and early retirement scheme payments are tax-free up to a limit based on the employee's years of service.

The tax-free amount isn't part of the employee's ETP. It's reported as a lump sum in the employee's income statement or *PAYG payment summary – individual non-business*.

Any amount over the tax-free limit is part of the employee's ETP.

2019 changes

In the Mid-Year Economic and Fiscal Outlook 2018–19 (MYEFO), the government announced that it would extend the age at which employees can access concessional tax treatment for genuine redundancy and early retirement scheme payments. The extension was from the age-based limit of 65 years to age-pension age. The change became law on 29 October 2019 and applies to payments made to employees who are dismissed or retire on or after 1 July 2019.

If you paid an employee an ETP before 29 October 2019 and they were 65 years or older, they may have had more tax withheld than would be required under the new law. In these circumstances, you can revise the payment and refund the employee the excess tax withheld for any payment that qualifies as a genuine redundancy payment or early retirement scheme payment.

If you recalculate tax withheld and refund the difference to the employee, and you have already paid us the tax withheld through lodging your activity statement, you can revise the activity statement to show the corrected withholding amount for that period.

If you report through Single Touch Payroll (STP), you can make the reporting correction at the next pay event. This will correct the amount reported in the income statement.

If you need to make an amendment after you have finalised your STP, see Correcting information reported through STP.

If you're not yet reporting through STP and have issued a part year *PAYG payment summary – individual non-business* or *PAYG payment summary – employment termination payment*, you **can't change** the information on a PAYG withholding payment summary after you have given it to the payee or provided your PAYG payment summary annual report to us. For more information on amending a *PAYG payment summary,* see PAYG withholding payment summaries.

For more information see Genuine redundancy and early retirement scheme changes.

Example: Applying the change to payments made before 29 October 2019

Ruth was born on 31 January 1954. She was made redundant from XYZ Pty Ltd on 1 September 2019, when she was 65 years old. She was paid out more than she would have received had she resigned.

Ruth was over the age limit of 65 years old when she was dismissed, so her redundancy was non-genuine. XYZ applied the ETP cap to her payment and tax was withheld at 17%.

On 28 October 2019, legislation to change the age limits for a genuine redundancy – from 65 years old to age-pension age – receive royal assent. Ruth determines that her pension age under the new law is 66 years. She asks XYZ to review her redundancy payment.

With the changed age limits, Ruth's payment now meets the requirements for a genuine redundancy payment. It is tax-free up to the limit, based on her years of service.

XYZ, which reports through STP, refunds the extra tax withheld to Ruth. As XYZ had made their finalisation declaration they have to submit an update event.

Working out and reporting the tax-free amount

The tax-free limit is calculated as:

- base amount + (service amount × years of service)

The base amount and service amount are indexed annually.

For example, for 2023–24 the tax-free limit is equal to $11,985 (base amount), plus $5,994 (service amount) multiplied by the years of service. If there had been 10 years' service, the tax-free limit for the year ending 30 June 2024 is:

- $11,985 + ($5,994 × 10) = $11,985 + $59,940 = $71,925.

The tax-free component of a genuine redundancy or early retirement scheme payment is shown at lump sum D on the employee's *income statement or PAYG payment summary – individual non-business*.

Example: Genuine redundancy, tax-free component only

Moira is 42 and started working for EFG Pty Ltd on 3 July 2006. Moira is made redundant effective 15 August 2023 as the company merged with another company and her role was no longer needed. Moira is paid 2 weeks for each year of her 17 years of service, based on her weekly earnings of $2,000 (2 ×$2,000 ×17 = $68,000).

She is receiving a genuine redundancy, so she is entitled to the tax-free component. Following the 2023–24 base and service amounts previously mentioned, and her 17 years of completed service, the tax-free limit for Moira is $11,985 + ($5,994 × 17) = $113,833.

The amount Moira receives in redundancy payment ($68,000) is less than the amount she is entitled to a tax-free component ($113,883). This means the whole of Moira's redundancy payment is tax-free.

Moira won't receive an ETP payment summary. Her entire redundancy payment will appear on her income statement or *individual non-business payment summary* at lump sum D.

Example: Genuine redundancy

Sonya is a 54-year-old chief financial officer (CFO) who has been working for Green Waste for 10 years. In 2023–24, Green Waste is taken over by a larger company, which already has a CFO. Sonya’s position is no longer needed and her employment is terminated. She accepts a redundancy and is paid $190,000. $140,000 of this payment is due to being made redundant. Her other taxable income in 2023–24 was $200,000.

Sonya’s payment is a genuine redundancy payment because her position is no longer required. Even though the position of CFO still exists, the position does not need to be filled by 2 people.

The genuine redundancy part of Sonya’s payment is $140,000. The tax-free part of the payment is $71,925, based on her 10 years' service. The remaining $68,075 is subject to the **ETP cap** (not the whole-of-income cap) and is taxed concessionally because it is under the ETP cap.

The lesser of either the ETP cap or the **whole-of-income cap** applies to the remaining $50,000 ($190,000 – $140,000). Sonya also earned $200,000 other taxable income, so her calculated whole-of-income cap is zero and is the lower cap. As a result, Sonya’s ETP amount of $50,000 does not receive concessional tax rates and withholding is at the highest tax rate (47% in 2023–24).

For more information see:

- ETP caps – Tax table for employment termination payments
- PAYG payment summary – individual non-business
- Single Touch Payroll

Redundancy

Only a payment for a **genuine** redundancy is eligible for the tax-free limit. A genuine redundancy occurs when the employer has made a decision that the job no longer exists and terminates the employee's employment.

A payment for a **non-genuine** redundancy is taxed as part of the employee's ETP. A non-genuine redundancy occurs when the employee:

- is dismissed because they've reached normal retirement age
- is their age-pension age or older on the day of dismissal
- leaves voluntarily
- has their contract terminated
- is dismissed for disciplinary or inefficiency reasons.

Age-pension age

Table 1: Age-pension age for men and women

Date of birth	Age-pension age
Before 1 July 1952	65 years
1 July 1952 to 31 December 1953	65 years and 6 months
1 January 1954 to 30 June 1955	66 years
1 July 1955 to 31 December 1956	66 years and 6 months
On or after 1 January 1957	67 years

For more information see Taxation Ruling TR 2009/2 *Income tax: genuine redundancy payments*

Dismissal

Dismissal is the involuntary termination of an employee. It's the employer's decision that the employment will end, rather than the employee's decision to leave.

Provided that it's ultimately the employer's decision to cease employment, a dismissal can still occur when the employer offers a redundancy package to an employee to either:

- minimise disruption to other employees
- comply with industrial relations laws or a workplace agreement.

A redundancy is still considered genuine if the employer seeks expressions of interest from their employees before they decide which employee to dismiss.

Sometimes an employer places an employee in a position where there is little choice but to resign – for example, when the employer offers their employee any of the following:

- the choice between a package and another job that is different to their qualifications and experience
- a reduction in their pay
- dismissal without the benefits of a package.

In these situations, the dismissal is generally a non-genuine redundancy.

For more information see Taxation Ruling **TR 2009/2** *Income tax: genuine redundancy payments*

Early retirement scheme

An early retirement scheme is a plan that offers employees incentives to retire early or resign when the employer is rationalising or reorganising their business operations.

The scheme must meet certain conditions and be approved by us. We will provide approval to the employer as a **class ruling**. You can't start an early retirement scheme until you have the class ruling.

An early retirement scheme will generally be approved when it meets the following conditions:

- The scheme is available to broad groups of employees, such as all employees
  - hired by the organisation
  - who have reached a particular age
  - with a particular occupational skill.
- The scheme is part of a plan to reorganise business operations. You must be able to show that you're implementing the scheme to achieve a specific short-term objective. A specific objective may include
  - replacing employees with particular skills with employees who have different skills
  - the closure, relocation or reduction in output of part of the business operations
  - the introduction of new technology, processes, systems or productivity increases.

Your request for an early retirement scheme should be in writing and include:

- the date of effect (that is, the proposed timeline of the scheme)
- the employer's name and contact details
- a full and accurate description of the scheme
- a clear and accurate description of the class of persons subject to the scheme
- any supporting documents.

The request can be faxed to **1300 669 846** or mailed to

> **Australian Taxation Office**
> **PO Box 3100**
> **Penrith NSW 2740**

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Tax-free component of ETPs

Learn about when an employment termination payment may be eligible for a tax-free component.

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An ETP has a tax-free component if part of the payment relates to:

- employment before 1 July 1983
- invalidity.

The tax-free component may include both of these. The remainder of the ETP is the taxable component.

You should:

- record the taxable component and any tax-free component on the employee's income statement or ETP payment summary
- not withhold tax from the tax-free component.

Employment before 1 July 1983

If part of the ETP relates to employment that occurred before 1 July 1983, the amount to include in the tax-free component is worked out as follows:

- Step 1: Subtract the invalidity part (if any) from the ETP
- Step 2: Multiply the amount at Step 1 by the number of days of employment before 1 July 1983 then divide by the total number of days of employment to which the ETP relates.

Invalidity

An invalidity segment is part of an ETP that's paid because the employee sustained a permanent disability. It's not taxable. An invalidity segment can be paid if both conditions are met:

- Employment ceased as a result of ill health.
- Two medical practitioners have certified that it is unlikely the employee can ever be gainfully employed in the capacity for which they are reasonably qualified.

A death benefit ETP can't include an invalidity segment.

The invalidity segment of the ETP represents the time between the day employment stopped and the day the employee would have retired. It's worked out as follows:

- Amount of ETP × [Days to retirement ÷ (Employment days + Days to retirement)]

Notes:

- 'Days to retirement' are the number of days from the date of termination to the day the employee would have retired. This is generally the day the employee turns 65 or when they would have completed their period of service.
- 'Employment days' are the number of days of employment up to the date of termination.

Example: Employment termination payment with an invalidity segment

Jackson started work with XYZ Pty Ltd on 2 September 2013. He is no longer able to work on medical grounds. On 25 September 2022, his employment is terminated due to invalidity. Jackson will turn 65 years old on 25 September 2023. XYZ Pty Ltd pays Jackson an ETP made up of the following:

- golden handshake – $40,000
- unused rostered days off (RDOs) – $2,000
- unused sick leave – $10,000
- compensation – $50,000.

Because each payment is made for termination due to invalidity, the whole ETP ($102,000) is used to calculate the invalidity segment as follows:

- Amount of ETP × [Days to retirement ÷ (Employment days + Days to retirement)]
- $102,000 × [370÷ (3,305 + 370)] = $10,269

This $10,269 of the $102,000 is the invalidity segment, which is the tax-free component and the remaining $91,731 is taxable.

For more information see **Employment termination payment with an invalidity segment worksheet**.

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Applying the ETP caps

ETPs are concessionally taxed up to a certain limit, or 'cap'. The top rate of tax applies to amounts over the cap.

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ETP caps

There are 2 caps:

- ETP cap – this is
  - indexed each year. In 2023–24 it's $235,000.
  - reduced by any earlier ETPs paid in the same income year and by any earlier ETPs for the same termination, regardless of when they are paid.
- Whole-of-income cap – this is
  - $180,000
  - reduced by any other taxable payments (such as salary and the taxable components of any earlier ETPs) received by the employee in the same income year.

The cap which applies depends on the type of payment. For example, a genuine redundancy payment and a 'golden handshake' may be subject to different caps.

Which cap to apply

Which cap applies depends on the type of payment.

The ETP cap applies to 'excluded payments'. These include:

- genuine redundancy and early retirement scheme payments that exceed the **tax-free limit**. Only the amount in excess of the limit is subject to the cap.
- payments that would have been for a genuine redundancy had the employee not reached their retirement age or age-pension age
- invalidity payments. Only the amount not included in the **tax-free component** is subject to the cap.
- compensation payments principally for personal injury, unfair dismissal, harassment or discrimination
- death benefit ETPs.

The lesser of the ETP cap and the whole-of-income cap should be applied to all other 'non-excluded payments'. These include:

- golden handshakes and gratuities
- **non-genuine redundancy payments** (unless it would have been a genuine redundancy, had the employee not reached their retirement or age-pension age)
- payments in lieu of notice
- payments for unused sick leave or unused rostered days off.

In the majority of cases, the whole-of-income cap will be less, so it will apply to these payments.

The only exception is if you make **multiple payments** to the employee for the same termination. The ETP cap is reduced by the other payments – even if they occur in different income years – and could then be lower than the whole-of-income cap.

Categorising payments

In some circumstances, a non-excluded payment, such as unused sick leave, may be classified as excluded and subject only to the ETP cap. You need to categorise each payment as excluded or non-excluded based on the following factors:

- the employment conditions – for example, what you're reasonably required to pay under the industrial agreement or employment contract for that termination type

- whether the payment is extra, discretionary or separate to what is reasonably required for that particular type of termination.

This example shows how a payment for unused sick leave may be classified as an excluded payment. Other non-excluded payments may be classified as excluded in similar circumstances.

Compensation payments

Payments that are made mainly to compensate an employee for a genuine dispute from personal injury, unfair dismissal, harassment or discrimination are excluded from the whole-of-income cap.

A payment does not need to be made as a result of proceedings before a court to be deemed as compensation. The employee or employer should keep evidence to show that a genuine dispute existed.

Example 1: Compensation for unfair dismissal

Julie's employment was terminated by her employer. Julie has evidence that she was unfairly dismissed because of her strong union affiliation and disputes her termination by engaging a lawyer to act on her behalf.

The lawyer negotiates a $20,000 out-of-court settlement with Julie's employer for unfair dismissal.

Although Julie's complaint did not go to court, there was a genuine dispute between Julie and her employer that resulted in compensation for her unfair dismissal. Her payment of $20,000 is a compensation payment. It will be subject to the ETP cap and excluded from the calculation of the whole-of-income cap.

Example 2: Compensation for harassment and discrimination

Monica's employment was terminated in September 2023 because of alleged poor work performance. Monica feels that she was unfairly dismissed, believing that her dismissal was actually as a result of a harassment claim she lodged against her manager. She takes court action against her employer and receives a payment of $150,000. Monica has other taxable income of $100,000.

As the payment is a result of the termination of her employment and made to compensate her for harassment and discrimination, it is subject to the ETP cap and excluded from the whole-of-income cap.

The ETP cap for 2023–24 is $235,000. Therefore, the entire $150,000 of her compensation payment will receive concessional tax treatment, regardless of her other income.

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Working out the whole-of-income cap amount

How to calculate and apply the whole-of-income cap amount to an ETP.

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Withholding from the ETP

The $180,000 whole-of-income cap is reduced by any other taxable income earned in the income year, either before or after receiving the ETP.

For the purposes of withholding from the ETP, you work out the cap based on the employee's taxable income **before** they are terminated.

If the employee earns more taxable income in the same income year after the termination – for example, they get another job – they may pay more tax on their ETP when they lodge their tax return. This is because the taxable income earned after the termination will further reduce their whole-of-income cap.

Example: applying the whole-of-income cap

Emilio is a 61-year-old former commercial pilot who retired from his job in November 2023. His taxable income from his wages in 2023–24 up to that point was $100,000. His employer paid him an ETP of $50,000, in the form of a gratuity.

Emilio's ETP is a non-excluded ETP, so the lesser of the 2 caps applies:

- Emilio's whole-of-income cap is reduced from $180,000 to $80,000 because he earned $100,000 in 2023–24.
- This is less than his **ETP cap** ($235,000 for 2023–24), so the calculated whole-of-income cap applies to his ETP.

Since Emilio's ETP ($50,000) is less than his calculated whole-of-income cap ($80,000), his entire ETP is taxed at concessional rates.

Emilio has reached his **preservation age**, so his employer withholds tax at a rate of 17% from his ETP.

Other taxable income for whole-of-income cap

The whole-of-income cap takes into account other taxable income that the employee earns in the same income year. Other taxable income is assessable income minus deductions the employee is entitled to.

Taxable income includes:

- salary or wage income (including payments for overtime)
- bank interest
- bonuses
- accrued leave paid when an employee is terminated

- the taxable component of other ETPs received earlier in the same income year – see Example: ETP paid in instalments.

If the employee receives a lump sum payment for unused long service leave that accrued before 16 August 1978 (shown at label B on your *Income statement* or a *PAYG payment summary – individual non-business*), only 5% of this payment is included in other taxable income.

Taxable income excludes:

- reportable fringe benefits
- salary sacrifice items
- super guarantee
- reportable employer super contributions
- reimbursements of work-related expenses
- the taxable component of the excluded part of a single ETP that's part excluded and part non-excluded – see
  - Example: Single ETP with excluded and non-excluded parts
  - Example: Single ETP with excluded and non-excluded parts, and unused leave payments.

Example: including taxable income in the whole-of-income cap

In August 2023, Tyrone's job is terminated. He receives:

- a $100,000 gratuity
- $20,000 for accrued leave
- $5,000 in salary for the period from 1 July 2023 to the date of termination.

Tyrone's whole-of-income cap is reduced from $180,000 to $155,000 because he received $25,000 in salary and accrued leave payments.

Because Tyrone has not reached his preservation age, his employer withholds 32% in tax from the $100,000 ETP. Tyrone's employer gives him a *PAYG payment summary – employment termination payment* showing:

- Total tax withheld: $32,000
- Date of payment: 15 August 2023
- Taxable component: $100,000
- Tax-free component: Nil
- ETP code: O.

Tyrone gets a new job in September 2023 and earns a further $60,000 salary in the 2023–24 income year.

When calculating the tax on Tyrone's ETP at the end of the income year, his calculated whole-of-income cap is further reduced to $95,000. His is calculated as $180,000 minus:

- $5,000 salary from his first job
- $20,000 accrued leave payment
- $60,000 salary from his second job.

As Tyrone's ETP of $100,000 is greater than his whole-of-income cap of $95,000, an amount of $5,000 will be taxed at the highest tax rates (47% in 2023–24) when he submits his tax return. Tyrone will need to pay an additional 15% tax on the $5,000 (32% tax has already been withheld by his employer). As a result, Tyrone will have a tax debt of $750.

Tax losses and the whole-of-income cap

Tax losses are **not** taken into account in working out the whole-of-income cap.

Example: ETPs and tax losses

Mike retires on 1 July 2023 and receives an ETP of $200,000. The ETP is subject to the whole-of-income cap of $180,000. Mike's employer withholds at:

- concessional tax rates from the first $180,000 of the ETP

- the highest tax rate (47% in 2023–24) from the $20,000 that is above the cap.

Mike has some negatively geared investments which resulted in a tax loss of $20,000 during 2023–24. He had a nil taxable income (not including ETPs) during 2023–24.

Mike's whole-of-income cap remains at $180,000 because his taxable income is nil.

Multiple payments

Both the whole-of-income cap and the ETP cap are reduced by any earlier life benefit ETPs paid to the employee in the same income year, even if they are for different terminations.

In addition, the ETP cap is reduced by any earlier life-benefit ETPs paid for the same termination, even if the payments are in different income years.

These reductions affect the caps for:

- an ETP paid in instalments
- multiple ETPs
- a single ETP that includes excluded and non-excluded payments.

The death benefit ETP cap amount is independent of the life benefit ETP cap amount. Payments that count towards one cap don't count towards the other.

ETP paid in instalments

You may choose to pay an ETP in instalments. For payments made after the initial payment, the cap amount is reduced by the previous payment or payments for the same termination that counted towards the cap.

Example: ETP paid in instalments

Craig retired from his job in a law firm in December 2023 and received a termination payment of $100,000 paid in two instalments – $50,000 in December 2023 and $50,000 in June

2024. At the time he retired, he had taxable income from wages of $95,000.

Craig’s ETP was a non-excluded termination payment that is subject to the lesser of the ETP cap and whole-of-income cap.

His whole-of-income cap ($180,000) is reduced to $85,000 – that's, $180,000 minus $95,000 taxable income from wages. His ETP cap is $235,000 for 2023–24. The whole-of-income cap will apply because it is the lesser of the two caps.

Craig’s first payment of $50,000, received in December 2023, is less than the calculated whole-of-income cap of $85,000 and will be concessionally taxed. His whole-of-income cap is now further reduced to $35,000 – that is, $85,000 minus the $50,000 termination payment.

For the second payment of $50,000, received in June 2024, only $35,000 falls within the calculated whole-of-income cap and is taxed at a concessional rate. The remaining $15,000 is taxed at the highest tax rate (47% in 2023–24).

Multiple ETPs

The ETP cap is reduced by earlier life benefit ETPs for the same termination, even if they're paid in different income years. This prevents splitting payments to avoid the ETP cap.

The ETP cap is also reduced by any earlier ETP received in the same income year, even if it's for a different termination.

Example: multiple ETPs for the same termination paid in different financial years

Lloyd's employment is terminated in June 2023 and he receives a $120,000 ETP. His final entitlements are calculated several weeks later and a second ETP of $120,000 is paid in August 2023.

Both payments are excluded payments that are subject only to the **ETP cap**.

The first ETP of $120,000 is paid in 2022–23. It's less than the ETP cap ($230,000 in 2022–23) and is therefore concessionally taxed.

Lloyd’s ETP cap for the second ETP of $120,000 paid in 2023–24 is only $115,000. This is because the $235,000 ETP cap for 2023–24 is reduced by the earlier ETP for the same termination – that is, $235,000 minus $120,000.

As a result, $5,000 of the ETP – that's the $120,000 ETP minus the reduced ETP cap of $115,000 – will be taxed at the highest tax rate (47% in 2023–24).

Single ETP with excluded and non-excluded payments

A single ETP may contain both:

- an excluded part (for example, a genuine redundancy payment) that is subject solely to the ETP cap
- a non-excluded part (for example, a gratuity) that's subject to the lesser of the ETP cap and whole-of-income cap.

The excluded part is taken into account first, then the non-excluded part. You should apply the:

- ETP cap to the excluded part
- lesser of the remaining ETP cap and the whole-of-income cap to the non-excluded part. When calculating the whole-of-income cap, the employee's taxable income includes the taxable component of the excluded part.

You'll need to issue 2 ETP payment summaries – one for the excluded part and one for the non-excluded part.

Example: single ETP with excluded and non-excluded parts

Robyn receives a single ETP of $170,000 in 2023–24. It consists of 2 parts:

- $120,000 compensation for unfair dismissal – this is an excluded payment that is subject to the ETP cap only

- a $50,000 gratuity – this is a non-excluded payment that is subject to the lesser of the whole-of-income cap and ETP cap.

Robyn also earned $20,000 in salary and wages.

Even though the 2 parts are in the one ETP, the excluded part is taken as being received first. The entire $120,000 of her compensation payment is an excluded payment and is taxed at a concessional rate because it is less than the ETP cap.

The balance of the ETP cap is $115,000 ($235,000 for 2023–24 minus $120,000).

The gratuity part of Robyn's ETP is subject to the lesser of the two caps. Robyn's calculated whole-of-income cap is $40,000 ($180,000 reduced by her $20,000 salary, and the $120,000 compensation).

Because Robyn's whole-of-income cap ($40,000) is the lesser of the two caps, it applies to her $50,000 gratuity. Only $40,000 of Robyn's gratuity will receive concessional tax treatment.

Withholding and income statements or payment summaries

Employers need to:

- withhold from the taxable component of the ETP at the correct rate. The rate depends on the applicable cap and, for life benefit ETPs, whether the employee has reached their preservation age.
- enter the appropriate codes on the employee's ETP income statement or ETP payment summary, to confirm the correct rate of tax has been applied.

If you're using Single Touch Payroll to report the ETP, it's included on the employee's income statement. Otherwise, you need to give the ETP payment summary to the employee within 14 days of paying the ETP.

See **Tax table for employment termination payments** to work out the:

- employee's preservation age
- the amount to withhold

- the codes to enter on the employee's payment summary.

You can use the **ETP payment summary paper form** available from us or an equivalent payment summary produced by your payroll software.

Example: single ETP with excluded and non-excluded parts and unused leave payments

After 5 years' service, Alec, who's 30 years old, is made redundant from his place of work in 2023–24. He receives the following payments in his termination pay:

- redundancy pay – $40,000.00
- unused sick leave – $6,247.00
- payment in lieu of notice – $1,723.42
- unused annual leave – $5,234.17
- unused long service leave – $11,423.91
- gratuity – $25,000.00.

Under Alec's workplace agreement, payment in lieu of notice and the gratuity are payable on termination of employment – this means they are paid for any type of departure, including voluntary termination. Alec's employer has contacted us and confirmed that his redundancy meets the conditions of a genuine redundancy. This means the redundancy payment and unused sick leave payment are in excess of what was reasonably expected to be paid for a voluntary termination.

The redundancy payment and unused sick leave payment are excluded payments and the ETP cap applies. The payment in lieu of notice and gratuity are non-excluded payments, and the lesser of the ETP cap and whole-of-income cap applies.

Alec had previously received $140,000 in other taxable payments (salary and wage income) during the income year.

Steps to work out how Alec's termination pay is taxed

Step	Action	Result
1	**Calculate the genuine redundancy payment** The redundancy payment and unused sick leave qualify as genuine redundancy: $40,000 + $6,247.	$46,247
2	**Calculate the tax-free limit on the genuine redundancy payment** The tax-free amount in 2023–24 is $11,985 + $5,994 for each completed year of service. Alec has 5 years of completed service: $11,985 + (5 × $5,994) Note: The result is shown at label D on a *PAYG payment summary – individual non-business*.	$41,955
3	**Calculate the taxable component of the genuine redundancy part of the payment** This is the genuine redundancy payment from step 1 minus the tax-free limit amount from step 2: $46,247 − $41,955 Note: The result is shown at Taxable component on a *PAYG payment summary — employment termination payment* with ETP code R. Because this part of the termination payment is an excluded payment, only the ETP cap applies. Alec is under the preservation age which means the excluded payment of $4,292 will be taxed at 32%.	$4,292 ETP code R
4	**Calculate the remaining ETP cap** This amount is the ETP cap ($235,000 for 2023–24) minus the taxable component of the	$230,708

	excluded payment (from step 3): $235,000 – $4,292.	
5	**Calculate the non-excluded payment** The non-excluded part of the termination payment is the payment in lieu of notice and the gratuity: $1,723 + $25,000. Note: The result is shown at Taxable component on a separate *PAYG payment summary – employment termination payment* with ETP code O.	$26,723 ETP code O
6	**Calculate the whole-of-income cap** This is the whole-of-income cap of $180,000 minus other taxable income: • $140,000 salary and wage income • $16,657 for unused annual and long service leave Note: The whole-of-income cap is not reduced by the excluded part of the termination payment because it was received at the same time as the non-excluded payment – that is, it was not received earlier in the income year.	$23,343 (calculated whole-of-income cap)
7	**Determine the lesser of the ETP caps** Alec's non-excluded payment will be subject to the lesser of the remaining ETP cap or the whole-of-income cap: • Remaining ETP cap (from step 4) $230,708 • Calculated whole-of-income cap (from step 6) $23,343.	$23,343 (calculated whole-of-income cap is the lesser cap)
8	**Apply the calculated whole-of-income cap to the non-**	$23,343 taxed at

	excluded payment The non-excluded payment ($26,723 from step 5) is taxed concessionally up to the calculated whole-of-income cap of $23,343. The remainder of the non-excluded payment ($26,723 – $23,343 = $3,380) is above the whole-of-income cap and is taxed at the highest tax rate (47% in 2023–24).	32% $3,380 taxed at 47%

Alec's payments for unused annual and long service leave totalling $16,657 are not part of his ETP. They are taxed separately and reported on his *PAYG payment summary – individual non-business*.

Find out about:

- Amending a payment summary
- **The 12-month rule**

For more information see **PAYG payment summary – employment termination payment.**

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Amending a payment summary

How to amend eligible termination payment information in a payment summary.

Last updated 21 June 2024

If there's a mistake with any amount or ETP code in the payment summary given to the employee or us, you should complete a new payment summary, entering X in the label Amending a payment summary.

If there's a change in circumstances and you have not yet issued the payment summary or lodged your *PAYG withholding annual report*, you can complete the payment summary according to the updated circumstances.

For example, if an employee retires from their position on a certain date, and that former employee dies before the payment summary is issued, then the payment and payment summary should be completed as a death benefit ETP.

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The 12-month rule

Learn about how the 12-month rule affects tax on eligible termination payments.

Last updated 20 June 2024

To receive concessional tax treatment, an ETP must generally be paid within 12 months of termination.

Payments outside the 12-month period are included in the recipient's assessable income and taxed at their marginal tax rates.

The 12-month rule does not apply to the taxable component of genuine redundancy payments and early retirement scheme payments.

A payment that is made more than 12 months after termination can still be treated as an ETP in any of the following circumstances:

- the delay is due to legal action that began within 12 months of the termination, provided the legal action concerned the entitlement to the payment or the amount of the entitlement
- the payment is made by a liquidator, receiver or trustee in bankruptcy of an entity that was otherwise liable to make the payment and the date of appointment of the liquidator, receiver or trustee is no later than 12 months after the termination of employment
- a payment is received from a redundancy trust (in some cases).

For more information see:

- ETP 2018/1 *Income Tax Employment Termination Payments (12 month rule) Determination 2018*
- Income Tax: Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2019

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Our commitment to you

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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