
TREASURY LAWS AMENDMENT (2019 MEASURES NO. #) BILL 2019

EXPOSURE DRAFT EXPLANATORY MATERIALS

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Bill	Treasury Laws Amendment (2019 Measures No. #) Bill 2019
ITAA 1997	<i>Income Tax Assessment Act 1997</i>

Chapter 1

Genuine redundancy and early retirement scheme payments—alignment with pension age

Outline of chapter

- 1.1 Schedule # to this Bill amends the tax law to extend the concessional taxation treatment to amounts paid for genuine redundancy and early retirement to individuals who are 65 or more years of age provided the dismissal or retirement occurs before they reach pension age.
- 1.2 All legislative references are to the ITAA 1997 unless the contrary is indicated.

Context of amendments

- 1.3 An individual is entitled to concessional taxation treatment if they receive a genuine redundancy or early retirement scheme payment. A genuine redundancy or early retirement scheme payment is the amount paid upon termination or retirement that exceeds the amount that would be expected to be paid upon voluntary termination or retirement.
- 1.4 The taxation law provides for part of a genuine redundancy or early retirement scheme payment (the tax free component) to be non-assessable non-exempt income.
- 1.5 Under section 83-170, the amount of the tax free component of an eligible payment is equal to:
- $$\textit{base amount} + (\textit{service amount} \times \textit{years of service})$$
- 1.6 The years of service in the formula above are the number of whole years of employment in the period or the sum of the periods to which the genuine redundancy or early retirement scheme payment relates.
- 1.7 The base amount and service amount are specified under subdivision 960-M, and are indexed annually. For the 2019-20 financial year the base amount is \$10,638 and the service amount is \$5,320.
- 1.8 An amount paid to an individual is only eligible to be a genuine redundancy payment or early retirement scheme payment if the individual is less than 65 years of age at the time of their dismissal or retirement.

1.9 The table below sets out the age pension qualifying age for men and women:

Table 1.1: Pension age for men and women (subsections 23(5A) and (5D) of the *Social Security Act 1991*):

Date of Birth	Age pension qualifying age
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

1.10 The taxable part of a genuine redundancy payment or early retirement scheme payment is an employment termination payment.

1.11 Consistent with other employment termination payments, the rate of income tax payable on the payment is effectively capped through a tax offset up to a specified threshold – see Division 82.

1.12 The amount of this cap for a payment depends on the nature of the payment. Both genuine redundancy payments and early retirement scheme payments are what is referred to as ‘excluded payments’, which means, broadly, that more generous caps apply (see section 82-10). A payment that would be a genuine redundancy payment but for the age of the recipient is also an excluded payment (see paragraph 82-10(6)(a)).

Summary of new law

1.13 Schedule # to this Bill amends Subdivision 83-C to extend concessional taxation treatment for genuine redundancy payment and early retirement scheme payment to include payments made to individuals who are 65 years or older if they are dismissed or retire before they reach pension age.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Genuine redundancy payments and early retirement scheme payments are eligible for concessional taxation treatment.</p> <p>For a payment to an individual to be eligible to be a genuine redundancy payment or early retirement scheme payment, the individual must, in addition to satisfying other criteria, have not reached the age at which they qualify for the age pension on the day of their dismissal or retirement.</p>	<p>Genuine redundancy payments and early retirement scheme payments are eligible for concessional taxation treatment.</p> <p>For a payment to an individual to be eligible to be a genuine redundancy payment or early retirement scheme payment the individual must, in addition to satisfying other criteria, have been less than 65 years of age on the day of dismissal or retirement.</p>

Detailed explanation of new law

1.14 Genuine redundancy payments and early retirement scheme payments are eligible for concessional taxation treatment.

1.15 Schedule # amends the definitions of ‘genuine redundancy payment’ and ‘early retirement scheme payment’ in Subdivision 83-C. As a result of the amendments, for a payment to an individual to be eligible to be a genuine redundancy payment or early retirement scheme payment the individual must not have yet reached age pension qualifying age on the day of dismissal or retirement. This replaces the prior requirement that, on the day of dismissal or retirement, the individual must not have reached the age of 65. *[Schedule #, items 1 and 2, subparagraphs 83-175(2)(a)(i) and 83-180(2)(a)(i)]*

1.16 The amendments allow payments to individuals that are 65 years of age or more but are below the age at which they are entitled to receive the age pension to be genuine redundancy payments or early retirement scheme payments, subject to satisfying the other eligibility criteria. This means that such payments have a tax free component that is not assessable income and not exempt income. Consistent with the treatment of other genuine redundancy payments or early retirement scheme payments, the remainder of the payment is an employment termination payment that is an ‘excluded payment’ (see paragraph 1.12 above).

1.17 The amendments also define ‘pension age’ throughout the ITAA 1997 in the Dictionary in the ITAA 1997 as having the same meaning as in subsection 23(1) of the *Social Security Act 1991* (see paragraph 1.9 above). *[Schedule #, item 11, definition of ‘pension age’ in subsection 995-1(1)]*

Example 1.1: genuine redundancy payment recipient below pension age

Eloise is dismissed from her position as Senior Executive Global Director of Shared Worldwide Procurement at XYZ Company on 30 June 2023. This follows, a strategic restructure in which the company's Board decided to withdraw from the shared procurement model. Eloise's skills are considered not to be suited for other roles in the company.

Eloise was born on 1 February 1957 and is 66 years and five months old at the date of dismissal. XYZ Company pays Eloise a termination payment upon dismissal of which \$50,000 is a genuine redundancy payment.

The \$50,000 amount is a genuine redundancy payment as Eloise has not reached the pension age of 67 years at the date of termination of her employment on 30 June 2023.

As a result, Eloise is not subject to tax on the tax-free component of the payment (which, depending on her period of service, may be the entire payment). Further, to the extent the payment is not solely made up of a tax free component, Eloise is entitled to a tax offset to ensure that the rate of income tax payable on the taxable component of the payment does not exceed the relevant threshold specified in Division 82.

Consequential amendments

1.18 Schedule # also makes consequential amendments to the definition of 'pension age' and the use of that term in the ITAA 1997.

1.19 The definitions of pension age in subsections 52-65(3) and 52-105(6) in the ITAA 1997, as well as the reference to these definitions in the Dictionary to the ITAA 1997 are repealed. While these definitions are the same as the definition inserted by these amendments, these definitions did not apply across the ITAA 1997 but only for the purposes of specific provisions. The inclusion of the definition in the Dictionary ensures that it applies throughout the ITAA 1997 (other than in relation to the Abstudy scheme — see paragraph 1.21 below). *[Schedule #, items 8 and 10, subsections 52-65(3) and 52-105(6)]*

1.20 The amendments also asterisk references to 'pension age' in Division 52 (certain pensions, benefits and allowances, etc) and insert guidance material explaining that the definition of pension age is the same as in the *Social Security Act 1991*. *[Schedule #, items 4 to 7 and 9, paragraph (b) of step 1 of the method statements in subsections 52-25(3), 52-30(3) and 52-35(3) and the notes to subsections 52-65(2) and 52-105(5)]*

1.21 A note is included to the definition of pension age to point out that a different definition of 'pension age' continues to apply in

Subdivision 52-E solely for the purposes of the income tax treatment of payments under the Abstudy scheme. *[Schedule #, item 11, note to definition of 'pension age' in subsection 995-1(1)]*

Application and transitional provisions

Application and commencement

1.22 The amendments in Schedule # commence on the first day of first quarter following Royal Assent of the Bill. *[Clause 2]*

1.23 The amendments apply to genuine redundancy and early retirement payments made to individuals who are dismissed or retire on or after 1 July 2019. *[Schedule #, item 3]*