Victorian Forestry Worker Support Program - ATO Class Ruling

About the Class Ruling

The Australian Taxation Office (**ATO**) has published a Class Ruling for the Victorian Forestry Worker Support Program.

A Class Ruling is a form of advice prepared by the ATO regarding how it will interpret and apply the taxation legislation in specific circumstances.

This Class Ruling provides the ATO’s view on the tax consequences for certain recipients that receive financial support under the Victorian Forestry Worker Support Program. The Class Ruling is not law, however those to which it applies may rely on it, and the ATO will be legally bound to act consistently with it.

This ruling means native timber employees:

* are concessionally taxed on their Government Top-up Payment
* are not taxed on relocation reimbursement payments
* will be subject to capital gains tax on hardship payments

It applies to casual, piece rate and seasonal employees as well as full time and part time employees.

The ATO Class Ruling can be viewed or downloaded from the ATO website via the following link

<https://www.ato.gov.au/single-page-applications/legaldatabase#Law>

This guide provides an overview of the Class Ruling and outlines the potential tax consequences for individuals that receive payments from the Victorian Forestry Worker Support Program.

What to do with the Class Ruling

Employees who have received a payment from the Victorian Forestry Worker Support Program.

can take the class ruling to their accountant for the appropriate tax treatment to be applied.

When the Class Ruling applies from

The Class Ruling applies as at 6 November 2024 to eligible employees that have received payments from the Victorian Forestry Worker Support Program from 1 February 2023 to 30 June 2028.

**Disclaimer**

The information contained in this guide regarding the tax consequences for individuals that receive Victorian Forestry Worker Support Program payments is a summary only and does not constitute tax advice. Individuals should refer to the Class Ruling and ATO website for further information. Individuals should seek independent tax advice to determine the specific tax consequences that may arise from receiving support payments.

Worker Support Payments covered by the Class Ruling

The Class Ruling covers the following payments:

* Government Top-Up Payment
* Relocation reimbursement payment
* Hardship payment.

Government Top-Up Payment – summary of Class Ruling tax consequences

A Government Top-Up Payment is available to eligible employees that have been made genuinely redundant or had their casual employment contract ended because of the end of native timber harvesting in Victoria. Employees can receive up to $150,000 under the age of 45 or $200,000 over the age of 45.

The Class Ruling means that as long as the relevant criteria contained in the *Income Tax Assessment Act 1997* is met, a Government Top-Up Payment received by an employee:

* will be treated as a genuine redundancy payment, which will be tax-free up to a certain limit

OR

* may be treated as an employment termination payment (ETP), which may be concessionally taxed depending on the employee’s individual circumstances

AND

* is not subject to capital gains tax.

Only eligible employees who receive the Government Top-Up Payment can treat the payment as a genuine redundancy payment or ETP for the purposes of receiving tax-free or concessional tax treatment.

If you are an independent contractor and you have received a Government Top-Up Payment, you will not be eligible for any tax-free or concessional tax treatment. This means that the Government Top-Up Payment will be subject to income tax. A withholding tax at 47 %will be applied to the payment.

Genuine redundancy payment

A genuine redundancy payment is defined in the *Income Tax Assessment Act 1997* as: *a payment received by an employee who is dismissed from employment because the employee's position is genuinely redundant as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the dismissal.*

The ATO has set criteria in the class ruling for the Government Top-Up Payment to be considered a genuine redundancy payment. If the ATO criteria is not met, the Government Top-Up Payment will not be classed as a genuine redundancy payment for tax purposes.

Tax treatment of a genuine redundancy payment

If the Government Top-Up Payment is classed as a genuine redundancy payment:

* it will be tax-free up to a specified genuine redundancy cap depending on the employee’s years of service
* any amount that goes over the genuine redundancy cap will be concessionally taxed as an employment termination payment (ETP) up to the ETP cap of $245,000
* any amount that goes over the ETP cap will be taxed at the individual’s marginal tax rate.

For the 2024-25 financial year, the genuine redundancy cap is calculated at: $12,524 + ($6,264 x the employee’s years of service, rounded down to the next whole year).

An employee’s “years of service” means the number of whole years in the period, or sum of periods, of employment the payment relates to. This should be the same as the number of years the Government Top-up Payment was calculated against.

This may include multiple non-consecutive periods of employment in the Victorian native timber industry (e.g. “seasonal” periods with the same employer).

The after-tax value of the Government Top-Up Payment an employee receives will vary from employee to employee.

The amount of the Government Top-Up Payment that exceeds the genuine redundancy cap is taxed as an ETP.

**Example 1: Government top-up payment is a genuine redundancy payment and entirely tax-free**

Samantha is a 40-year old harvest and haulage employee who was made redundant by her employer in August 2024. Samantha worked for her employer for 4 years and receives a government top-up payment of $20,000. ForestWorks determines that Samantha is eligible for genuine redundancy treatment.

The following tax treatment will apply to Samantha when she receives the government top-up payment:

* The tax-free cap of the government top-up payment is calculated as follows:

$12,524 + ($6,264 x 4 years of service) = $37,580

The government top-up payment of $20,000 falls entirely within the genuine redundancy cap. This means that the $20,000 payment is tax-free and will be reported at the non-taxable ‘Lump Sum D’ label in Samantha’s tax return. ForestWorks does not withhold any tax.

**Example 2: Government top-up payment is a genuine redundancy payment and ETP – over preservation age**

David has worked for his native timber employer for 5 years. In July 2024, David is made redundant by his employer and receives a $50,000 government top-up payment from ForestWorks. David is 65 years old and does not have any other income for the 2024-25 financial year. The government top-up payment is treated as a genuine redundancy payment for tax purposes.

The following tax treatment will apply to David when he receives the government top-up payment:

* The tax-free cap of the government top-up payment is calculated as follows:

$12,524 + ($6,264 x 5 years of service) = $43,844

* This means $43,844 of the $50,000 payment is tax-free. ForestWorks does not withhold any tax from this amount.
* The amount of the government top-up payment that exceeds the genuine redundancy cap is $6,156 and is treated as an ETP. The ETP cap of $245,000 applies. As David is over his preservation age, ForestWorks withholds at a rate of 17 %from the ETP which amounts to $1,047 (17% x $6,156). This amount is remitted to the ATO and the balance of $5,109 is paid to David.

Overall, David receives $48,953 ($43,844 + $5,109) of the $50,000 government top-up payment. The remaining $1,047 of the government top-up payment has been withheld and remitted to the ATO.

**Example 3: Government top-up payment is a genuine redundancy payment and ETP – under preservation age**

Rachel is a seed collector and was made redundant in August 2024. Rachel is 53 years old and was employed for 7 years. Rachel’s taxable income in the 2024-25 financial year was $150,000. Rachel was paid a government top-up payment of $80,000.

The following tax treatment will apply to Rachel when she receives the government top-up payment:

* The tax-free cap of the government top-up payment is calculated as follows:

$12,524 + ($6,264 x 7 years of service) = $56,372

* This means $56,372 of the $80,000 payment is tax-free and is not included in Rachel’s tax return. ForestWorks does not withhold any tax from this amount.
* The remaining $23,628 is treated as an ETP subject to the ETP cap of $245,000. Rachel is under her preservation age meaning ForestWorks withholds 32 %from the ETP (32% x $23,628 = $7,561) and remits this amount to the ATO. The remaining $16,067 is paid to Rachel.

Overall, Rachel receives $72,439 ($56,372 + $16,067) of the $80,000 government top-up payment. $7,561 of the government top-up payment has been withheld and remitted to the ATO.

Employee Termination Payment

Subject to some exclusions, an ETP is defined in the *Income Tax Assessment Act 1997* broadly as*: a payment received in consequence of the termination of a person’s employment that is received no later than 12 months after that termination*.

If an employee receives a Government Top-Up Payment after 12 months from the date of their termination it will not be classified as an ETP. It will be taxed according to the employee’s marginal tax rate.

If an employee does not satisfy the genuine redundancy rules, but satisfies the ETP requirements, the entire Government Top-Up Payment will be treated as an ETP.

Tax treatment of an employment termination payment

Concessional tax treatment is available to those receiving an ETP. The tax rates (17%, 32% or 47%) will vary depending on:

* whether the recipient has reached preservation age (60 years old)

AND/OR

* whether they have earned other significant taxable income.

Relocation reimbursement payment – summary of Class Ruling tax consequences

A relocation reimbursement payment of up to $45,000 is available for native timber employees who:

* have been made redundant or had their casual contract ended

AND

* secured employment at a worksite located 50 kilometres or more away from their current residence.

There are four categories of relocation reimbursement payments:

* Category 1 – Removalist and relocation expense reimbursement
* Category 2 – Property purchase and end of tenancy expense reimbursement
* Category 3 – Incidental relocation costs reimbursement
* Category 4 – Short-term accommodation costs reimbursement

The Class Ruling confirms that a relocation reimbursement payment received by an individual:

* is not included in an employee’s assessable income for income tax purposes;
* is subject to capital gains tax, but any capital gain is specifically disregarded; and
* is not a reportable fringe benefit amount for fringe benefit tax purposes.

This means that employees should not be taxed on their relocation reimbursement payments.

Hardship payment – summary of Class Ruling tax consequences

A hardship payment of $3,000 is available to a community forestry licensee or seed collector who has experienced significant hardship due to the end of native timber harvesting in Victoria.

The Class Ruling confirms that, a hardship payment received by an individual:

* is not included in assessable income for income tax purposes
* is subject to capital gains tax and must be reported as a capital gain in the employee’s tax return
* is not a reportable fringe benefit amount for fringe benefit tax purposes.

Who can use the class ruling

The Class Ruling only applies to employees who have had their employment terminated because of the end of native timber in Victoria’s State forests and have received any of the following payments from the Victorian Forestry Worker Support Program:

* Government Top-up Payment
* Relocation Reimbursement Payment
* Hardship payment

The Class Ruling does not apply to independent contractors that may receive payments under the Victorian Forestry Worker Support Program.

The Class Ruling also does not apply to other types of support that has been made available under the Forestry Transition Program, including business support, community support and other financial payments.

**Example 4: Government top-up payment is not a genuine redundancy payment or ETP**

John is an independent contractor in the native timber industry whose business has permanently closed in September 2024. John receives a $30,000 government top-up payment.

As John is not an employee, he is not eligible to receive tax-free or concessional tax treatment. This means that the $30,000 government top-up payment will be taxed at John’s marginal tax rates. ForestWorks withholds 47 %from the $30,000 ($14,100) and remits the withheld amount to the ATO.

Overall, John receives $15,900. Depending on John’s personal circumstances when he lodges his tax return for the 2024-25 financial year, he may receive a tax refund for some or all of the amount that was withheld from the government top-up payment.

Frequently asked questions (FAQs)

1. What is a Class Ruling?

The ATO is responsible for administering the Commonwealth taxation legislation.

A Class Ruling is a form of advice prepared by the ATO regarding how it will interpret and apply the taxation legislation in specific circumstances.

This Class Ruling provides the ATO’s view on how tax will be applied for certain recipients that receive financial support from the Victorian Forestry Worker Support Program. The Class Ruling is not law, however those that it applies may rely on it, and the ATO will be legally bound to act consistently with it.

A Class Ruling contains a legally binding section. This usually includes the details of the arrangements involved and the ruling itself.

If a person relies on the legally binding section, they are protected from any tax shortfall, interest or administrative penalties if the ATO’s advice in the Class Ruling is later deemed to be incorrect.

If actual arrangements depart materially from those detailed in the ruling, the ruling is no longer binding on the ATO and cannot be relied upon.

Non-binding sections of a Class Ruling, usually an Appendix, are only administratively binding on the ATO. Reliance on the non-binding sections is likely to have more limited protection against any tax shortfall, interest or administrative penalties in the event the Class Ruling is later deemed to be incorrect.

2. Why was the Government Top-Up Payment I received less than what I was originally approved to receive?

The Government Top-Up Payment amount you are approved for is before tax is applied.

Depending on how much a payment is, ForestWorks may be required by law to withhold some of the payment and provide it to the ATO as withholding tax.

The amount of the Government Top-Up Payment you ultimately receive may have withholding tax applied.

You may be able to claim some of this back via your tax return.

There may be other circumstances where ForestWorks is required by law to withhold additional amounts from the Government Top-Up Payment.

For example - If you do not provide your tax file number ForestWorks is required to:

* withhold 47 %from the Government Top-Up Payment made to resident employees
* 45 %for foreign resident employees.

This means you may initially receive less than originally advised.

3. Is there anything I need to do when I receive my Government Top-Up payment?

You need to take the class ruling to your accountant for the appropriate tax treatment to be applied

The ATO Class Ruling can be viewed or downloaded from the ATO website via the following link <https://www.ato.gov.au/single-page-applications/legaldatabase#Law>

ForestWorks will also be able to provide you with a letter to assist you with this.

**4. I was made redundant by my employer but my Government Top-Up Payment was subject to withholding tax. Why?**

You can be considered genuinely redundant under the *Fair Work Act 2009* but at the same time be excluded from genuine redundancy treatment for tax purposes under the *Income Tax Assessment Act 1997*.

This is because there are different requirements to be considered genuinely redundant for employment and tax purposes.

Similarly, the *Income Tax Assessment Act 1997* contains specific exceptions that exclude a payment from being classified as a genuine redundancy payment.

For example, A payment will not be a genuine redundancy payment and will be ineligible for tax-free treatment if:

* you are over the pension age
* if there was an arrangement between you and your employer to be employed after your dismissal.

The payment may still be taxed according to the ETP requirements.

**5. I am an owner of a business that also employs me. Can I make myself redundant and be eligible for tax-free treatment?**

It is possible that employees that are directors or owners of a company and are also employed by that company (called dual-capacity employees) can be made genuinely redundant.

It will depend on the relevant facts and circumstances relating to your employment.

 A dual-capacity employee may have been made genuinely redundant if:

* they did not consent to the termination of their employment
* they were forced to accept their termination as they did not have any real or practical choice due to external circumstances and factors.

Dual-capacity employees will not be considered to have been made genuinely redundant if their redundancy was artificial or contrived or if they consented to their termination.

**6. My employer has terminated my employment but found another job for me before I was dismissed. Am I still eligible for a genuine redundancy payment?**

In this scenario, the redundancy is not genuine as there was an arrangement to employ the terminated employee after their dismissal. The employee will not be eligible for tax-free treatment.

**7. I am an independent contractor and I have received a Government Top-Up Payment. Why has a 47 %withholding tax been applied?**

To ensure consistency in the administration of payments under the Worker Support Program and to ensure DEECA correctly meets its tax obligations, the highest marginal tax (47%) is withheld from all Government Top-Up Payments made to independent contractors.

This is because, unlike employees eligible for genuine redundancy, where specific tax treatments apply, independent contractors are not eligible for such concessions.

As a result, the tax rate cannot be determined at the payment calculation stage and must instead be assessed based on the contractor’s overall income at the time of their tax return.

It is the responsibility of each independent contractor to work with their tax agent to determine whether they are eligible to claim any of this amount back in their tax return. The availability of a tax refund will depend on individual circumstances.

**8. I have already received a Government Top-Up Payment and it was treated as an ETP. The Class Ruling now says that I was eligible for a genuine redundancy payment. Can I amend my tax return?**

If you are an employee and have received a Government Top-Up Payment prior to 6 November 2024, that payment may now be eligible to be reclassified for tax purposes as a genuine redundancy payment and may be subject to less tax.

You may be required to amend your tax return. You should seek independent tax advice to determine how to correctly report any payment you have received in your tax return.