



Decision impact statement

Commissioner of Taxation v Baya Casal [2026] FCAFC 11

❗ Relying on this Decision impact statement

This publication provides our view on the implications of the court or tribunal decision discussed, including on related public advice or guidance.

Taxpayers can rely on this Decision impact statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Decision impact statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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Venue:	Full Federal Court
Venue reference No:	VID 322 of 2025 (Full Federal Court) VID 46 of 2023 (Federal Court)
Judgment date:	20 February 2026 (Full Federal Court) 18 February 2025 (Federal Court)

Summary of decision

1. This Decision impact statement outlines the ATO's response to this case, which considered whether the position of the dismissed employee (Applicant) had become genuinely redundant for the purposes of subsection 83-175(1) of the *Income Tax Assessment Act 1997* (ITAA 1997).
2. The Full Federal Court concluded that the Applicant's position had become genuinely redundant. Accordingly, the payment the Applicant received from their employer in consequence of the voluntary termination of their employment was a genuine redundancy payment. As the Applicant's circumstances satisfied the formula in subsection 83-170(3) of the ITAA 1997, the entire amount of the payment was non-assessable non-exempt income and excluded from the Applicant's assessable income (that is, the entire amount was tax free) under subsection 83-170(2) of the ITAA 1997.

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3. All further legislative references in this Decision impact statement are to the ITAA 1997, unless otherwise indicated.
4. All judgment references in this Decision impact statement are to the judgment of *Commissioner of Taxation v Baya Casal* [2026] FCAFC 11, unless otherwise indicated.

Overview of facts

5. The case concerned an appeal by the Commissioner from the Federal Court. The primary judge had allowed the Applicant's appeal against an objection decision to a private ruling. The private ruling concluded that the payment to the Applicant was an employment termination payment and not a genuine redundancy payment for the purposes of subsection 83-175(1).
6. The description of the facts of the scheme in the private ruling was very limited. The primary judge construed the scheme as supplemented by the documentation that accompanied the Applicant's private ruling application.
7. In summary, the Applicant was employed on a part-time basis of 34.56 hours per week by an early learning centre (ELC) as an ELC assistant. The employer notified the Applicant that the ELC structure was to be remodelled. The Applicant was advised that they were eligible to be redeployed to a remodelled ELC role or they could take a redundancy.
8. The employer proposed 3 new ELC roles for the Applicant to choose from, one consisted of 28.5 hours per week and the other 2 roles consisted of 21.5 hours per week. If the Applicant accepted one of these roles, their part-time hours would decrease and their working days would change (although how the days would change was not specified in the private ruling application or supplemented documentation), but the skills and duties of the Applicant's new role would be similar.
9. The Applicant opted to accept the redundancy because the days and number of hours offered were not acceptable to them. The employer paid the Applicant 13 weeks pay in consequence of the termination of the Applicant's employment. The employer treated the payment as an employment termination payment that was subject to tax.
10. Based on the scheme, the primary judge concluded that the 3 roles offered to the Applicant involved an unknown change in the days to be worked, and a reduction in both hours and remuneration of between approximately 20% and 40% which was a material reduction in both hours and remuneration.¹ The primary judge concluded that the Applicant's position had become genuinely redundant for the purposes of subsection 83-175(1).²

Issues decided

11. The phrase 'genuinely redundant' in subsection 83-175(1) is not defined in the ITAA 1997.
12. The Full Federal Court clarified the following principles are relevant for determining whether an employee's position is genuinely redundant for the purposes of subsection 83-175(1):
 - It is the 'position', not the employee, as a person, that must be the subject of the genuine redundancy.³

¹ At [12].

² At [16].

³ At [26(b)] and [94–95].

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- The question of redundancy is a question of the continued utility of the job performed by the employee. There is no redundancy where an employee is dismissed for reasons relating to the personal competence of the individual employee.⁴
- The test is one of fact and degree. It is not a bright-line test, but a matter of impression based on the totality of the facts and circumstances.⁵ It requires an evaluative, holistic analysis.⁶
- The ‘attributes’ of a position must be identified. The change to those attributes then must result in ‘the position’ becoming redundant.⁷
- The attributes of a position are a matter of substance and not form. A position involves a collection of functions, duties and responsibilities of the employee. A position encompasses the type and nature of the tasks, functions and duties to be performed, the location at which those tasks and functions are to be performed, the scale of the tasks, functions and duties and the scope of responsibilities.⁸ The ordinary concepts of ‘duties’ and ‘responsibilities’ are wide enough to incorporate days and hours of work.⁹
- A reduction in hours and remuneration is a relevant factor to be considered as part of the evaluative and holistic analysis of whether an employee’s position has become genuinely redundant. Especially, where the reduction in hours and remuneration results from a change to the scope of the responsibilities or duties to be performed, the scale of the tasks to be carried out, or the location of the role.¹⁰ The importance of a reduction in hours and remuneration will vary depending on the circumstances.¹¹ A reduction in hours and remuneration are relevant, but they are not determinative in all cases.¹²
- It is necessary to consider the particular changes to the position to determine whether the role has so changed that the previous position can be said to no longer exist. The degree to which the original role has been changed must be sufficient to conclude that for all practical purposes the role no longer exists.¹³ This outcome can occur even where the role is replaced by a new position, no position at all, or some aspects of the employee’s duties are still required to be performed by somebody.¹⁴

ATO view of this decision

13. The ATO accepts that, as confirmed by the Full Federal Court, a material reduction in hours (and consequential remuneration) for an hourly paid employee can be a relevant factor in determining whether an employee’s position is genuinely redundant.

14. Ultimately, whether a position has become redundant is a question of fact and degree. It is not a question that involves bright-line tests but is a matter of impression

⁴ At [31].

⁵ At [33] and [46–48].

⁶ At [39–40], [50], [68], [90], [124], and [133].

⁷ At [34].

⁸ At [35].

⁹ At [89].

¹⁰ At [39].

¹¹ At [40].

¹² At [41–42], [110–111], [125], [127] and [136].

¹³ At [37].

¹⁴ At [42–43].

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based on the totality of the facts and circumstances.¹⁵ An evaluative, holistic approach is required.¹⁶

15. This decision does not mean that any reduction of 20% to 40% in hours and remuneration of a position will constitute a redundancy. The Full Federal Court rejected a purely mathematical approach.¹⁷

16. A reduction in hours and remuneration are relevant, but they are not determinative in all cases.¹⁸ Further, the outcome in this case 'does not mean that a reduction in hours/remuneration is significant in every case of part-time work. That will depend on the degree of reduction and the nature of the work performed.'¹⁹

Implications for affected advice or guidance

17. The ATO is reviewing Taxation Ruling TR 2009/2 *Income tax: genuine redundancy payments* to ensure it reflects the principles for determining whether a position has become genuinely redundant for the purposes of subsection 83-175(1), as set out at paragraph 12 of this Decision impact statement.

Comments

18. We invite you to advise us if you feel this decision has consequences we have not identified. Please forward your comments to the contact officer.

Due date: 26 June 2026

Contact officer details have been removed as the comments period has ended.

Commissioner of Taxation

27 May 2026

¹⁵ At [33] and [46–48].

¹⁶ At [39–40], [50], [68], [90], [124], and [133].

¹⁷ At [123].

¹⁸ At [41–42], [110–111], [125], [127] and [136].

¹⁹ At [110].

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References

Related rulings and determinations:

TR 2009/2

Legislative references:

- ITAA 1997 83-170(2)
- ITAA 1997 83-170(3)
- ITAA 1997 83-175(1)

Cases relied on:

Commissioner of Taxation v Baya Casal [2026] FCAFC 11; 314 FCR 294; 2026 ATC 21-001
Baya Casal v Deputy Commissioner of Taxation [2025] FCA 87; 2025 ATC 20-947; 122 ATR 177; [2025] ALMD 1887; [2025] ALMD 1888

ATO references

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