



## Class Ruling

# The Hans Pearson v State of Queensland: Applicant's Settlement Distribution Scheme – distribution received from the settlement sum

### **1 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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### **What this Ruling is about**

1. This Ruling sets out the tax consequences for individuals who receive a distribution from the Settlement Sum<sup>1</sup> under The Hans Pearson v State of Queensland: Applicant's Settlement Distribution Scheme (Settlement Distribution Scheme).
2. Relevant details of this scheme are set out in paragraphs 10 to 18 of this Ruling.
3. All legislative references are to provisions of the *Income Tax Assessment Act 1997* unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you (a participant) if you:
  - are an individual that falls into a category of persons referred to in paragraph 15 of this Ruling
  - are a registered participant in the Settlement Distribution Scheme, and
  - receive a distribution from the Settlement Sum.

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<sup>1</sup> Defined in paragraph 14 of this Ruling.

## When this Ruling applies

5. This Ruling applies from 1 July 2019 to 30 June 2021.

## Ruling

6. A distribution from the Settlement Sum to a participant under the Settlement Distribution Scheme is not assessable as ordinary income under section 6-5.

7. A distribution from the Settlement Sum to a participant under the Settlement Distribution Scheme is an amount received for the ending of rights to seek compensation and is subject to the capital gains tax (CGT) provisions in Part 3-1.

8. CGT event C2 under section 104-25 happens when any right a participant had to seek compensation ends.

9. However, any capital gain or capital loss a participant makes as a result of receiving a distribution from the Settlement Sum under the Settlement Distribution Scheme is disregarded under subsection 118-37(1).

## Scheme

10. The following description of the scheme is based on information provided by the administrator of the Settlement Distribution Scheme. If the scheme is not carried out as described, this Ruling cannot be relied upon.

11. The Settlement Distribution Scheme was established on 17 January 2020, pursuant to a court order in respect of the settlement of *The Hans Pearson v State of Queensland class action proceedings* (Class Action Proceedings).

12. The Class Action Proceedings were commenced by Mr Hans Pearson (the Applicant) in his own right and on behalf of Aboriginal and Torres Strait Islander Group Members (the Group Members) under Part IVA of the *Federal Court of Australia Act 1976*.

13. The Class Action Proceedings asserted that:

- the State of Queensland (Queensland) owed certain duties to the Applicant and the Group Members as a trustee and fiduciary in connection with wages and pocket money earned by the Applicant and the Group Members while their employment was controlled by the former Protection Acts<sup>2</sup> in force in Queensland during the period 12 October 1939 to 4 December 1972 (the Claim Period)
- Queensland contravened the *Racial Discrimination Act 1975* in the conduct of a reparation scheme established and operated by Queensland during the period 2002 to 2018, and
- regulations made pursuant to one of the former Protection Acts operated to enslave the Applicant and the Group Members in contravention of law.

14. The Class Action Proceedings were settled in September 2019, whereby Queensland agreed to pay an amount of \$190 million (the Settlement Sum), without admission of liability.

<sup>2</sup> *The Aboriginals Preservation and Protection Act of 1939 (Qld) (repealed), The Torres Strait Islanders Act of 1939 (Qld) (repealed), and The Aborigines' and Torres Strait Islanders' Affairs Act of 1965 (Qld) (repealed).*

15. There are approximately 14,000 individuals eligible to receive a distribution from the Settlement Sum under the Settlement Distribution Scheme. To be a participant under the Settlement Distribution Scheme, the individual must be:

- an Aboriginal or Torres Strait Islander person
  - who lived in a district or on a mission or reserve in Queensland
  - who was employed, or required to work, during all or part of the Claim Period, and
  - whose employment was controlled or required to be controlled by the former Protection Acts, or
- where such a person is deceased, a relative of that person (being a surviving spouse or child).<sup>3</sup>

16. The Settlement Sum was paid by Queensland to the administrator of the Settlement Distribution Scheme on 11 March 2020.

17. The administrator of the Settlement Distribution Scheme holds the Settlement Sum on trust for the participants until the entitlements of the participants are determined and distributions of the Settlement Sum are made.

18. Additional information about the Settlement Distribution Scheme is set out in the following documents:

- Federal Court orders and Settlement Distribution Scheme dated 17 January 2020, and
- Fourth further amended statement of claim.

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**Commissioner of Taxation**

9 September 2020

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<sup>3</sup> This Ruling is made on the basis that a relative that is registered with the Settlement Distribution Scheme falls within the definition of 'relative' in subsection 995-1(1).

**Appendix – Explanation**

ⓘ *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

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**When a distribution from the Settlement Sum will be assessable income**

19. A distribution made to a participant from the Settlement Sum will be included in the assessable income of a participant if it is:

- income in the ordinary sense of the word (ordinary income), or
- not ordinary income but through the operation of the Income Tax Assessment Acts it is included in assessable income (statutory income).

**Ordinary income**

20. Subsection 6-5(1) provides that the assessable income of a taxpayer includes income according to ordinary concepts.

21. The Income Tax Assessment Acts do not explain the meaning of 'income according to ordinary concepts', however, a substantial body of case law exists which identifies likely characteristics.

22. In *GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth)* [1990] HCA 25, the High Court stated:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes, the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

23. Amounts that are periodical, regular or recurrent, relied upon by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income, as are amounts that are the product in a real sense of any employment of, or services rendered by the recipient. Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.

24. No single factor is determinative of the receipt's character, but some factors may be more relevant than others in light of the circumstances of the case (see, for example, *Commissioner of Taxation (Cth) v Montgomery* [1999] HCA 34).

25. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient. The whole of the circumstances must be considered and the motive of the payer may be relevant to this consideration.

26. While a participant, or their relative, must have been employed, or required to work, to be eligible to be a registered participant in the Settlement Distribution Scheme, the distribution they receive from the Settlement Sum is not the product of employment or services rendered by the participant, nor is it considered to represent the payment of wages foregone or lost. Furthermore, a distribution from the Settlement Sum is not relied upon by the participants for their regular expenditure or paid for that purpose.

27. Distributions made from the Settlement Sum under the Settlement Distribution Scheme are one-off lump sum payments in the nature of compensation. Accordingly, a distribution from the Settlement Sum does not possess the characteristics of ordinary income and is therefore not assessable under section 6-5.

### ***Statutory income***

28. An amount that is not ordinary income may still be included in assessable income as a result of the operation of section 6-10 which includes statutory income in assessable income.

29. Statutory income relevantly includes net capital gains under section 102-5. In broad terms, a net capital gain is the difference between a person's capital gains and capital losses for an income year.

30. Generally, a capital gain or capital loss is made when a CGT event happens to a CGT asset.

31. Rights to seek compensation are CGT assets under section 108-5. Such rights arise at the time the compensable wrongs are committed.

32. CGT event C2 under section 104-25 happens at the time a right to seek compensation comes to an end.

33. However, any capital gain or capital loss made from a CGT event is disregarded pursuant to subparagraph 118-37(1)(a)(ii) where the CGT event relates directly to compensation or damages received for any wrong, injury or illness an individual or their relative suffers personally.

34. Any capital gain (or capital loss) arising from CGT event C2 happening on the ending of a participant's rights to seek compensation is disregarded under subparagraph 118-37(1)(a)(ii) as it relates directly to compensation for personal wrong, injury or illness.

35. Accordingly, a distribution made by the administrator of the Settlement Distribution Scheme to a participant from the Settlement Sum is not assessable under section 6-10 as statutory income.

## References

*Previous draft:*

Not previously issued as a draft

*Legislative references:*

- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 Pt 3-1
- ITAA 1997 102-5
- ITAA 1997 104-25
- ITAA 1997 108-5
- ITAA 1997 118-37(1)
- ITAA 1997 118-37(1)(a)(ii)
- TAA 1953
- Federal Court of Australia Act 1976
- Racial Discrimination Act 1975
- The Aboriginals Preservation and Protection Act of 1939 (Qld) (repealed)

- The Torres Strait Islanders Act of 1939 (Qld) (repealed)
- The Aborigines' and Torres Strait Islanders' Affairs Act of 1965 (Qld) (repealed)

*Case references:*

- Commissioner of Taxation (Cth) v Montgomery [1999] HCA 34; 198 CLR 639; 99 ATC 4749; 42 ATR 4757; 3 ALJR 1160
- GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth) [1990] HCA 25; 170 CLR 124; 90 ATC 4413; 21 ATR 1; 64 ALJR 392 1

ATO references

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