



Status: **legally binding**

## Class Ruling

# Royal Australian Navy – compensation for non-performance of training contract

### **❶ Relying on this Ruling**

This publication 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.

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

1. This Ruling sets out our opinion on the income tax consequences of damages received from the Commonwealth to compensate for a lost opportunity, specifically arising from the non-performance of training contracts agreed to between the Royal Australian Navy (Navy) and members of the Marine Technician cohort referred to as MT2010.
2. Details of this scheme are set out in paragraphs 10 to 15 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

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

4. This Ruling applies to you if you are a member of the Marine Technician cohort referred to as MT2010 and receive compensation from the Navy for the value of your lost opportunity to gain employment with a Certificate IV in Engineering.
5. This Ruling does not apply to anyone who is subject to the taxation of financial arrangements rules in Division 230 in relation to the scheme outlined in paragraphs 10 to 15 of this Ruling.

**Note:** Division 230 will not apply to individuals unless they have made an election for it to apply.

### **When this Ruling applies**

6. This Ruling applies to the income year in which compensation was received by claimants.

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## **Ruling**

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### **Ordinary income**

7. An amount received from the Commonwealth as compensation for the lost opportunity from not being awarded a Certificate IV in Engineering as promised under contract is not ordinary income under section 6-5.

### **Capital gains tax**

8. CGT event C2 (section 104-25) occurs when the compensation is received.

9. A capital gain or capital loss made from the receipt of the compensation is disregarded in full as a result of the exemption in paragraph 118-37(1)(a) which exempts compensation received for a wrong or injury you suffer in your occupation.

## **Scheme**

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

11. The applicants brought a suit against the Commonwealth for damages, for the value of their lost opportunity to gain employment with a Certificate IV in Engineering.

12. The proceedings asserted that:

- The applicants, each members of the Marine Technician cohort referred to as MT2010, entered into Training Contracts with the Navy.
- Part of the Navy's obligation under these contracts was to provide training sufficient for the applicants to attain a Certificate IV in Engineering, through the development and implementation of an agreed training plan.
- The Navy did not create the training plans for the applicants, and therefore did not fulfil its obligation under the agreement.

13. The applicants were successful in their legal action. The orders made by Garling J in the New South Wales Supreme Court gave judgment for each applicant, including interest.

14. Orders were subsequently made to confirm the judgment amounts for each plaintiff.

15. Additional information about the judgment amounts are set out in:

- the judgment of Garling J in *Searle v Commonwealth of Australia* (No. 9) [2023] NSWSC 215, and
- final orders made by Garling J in *Searle v Commonwealth of Australia* (No. 9) [2023] NSWSC 215 on 17 July 2023.

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**Commissioner of Taxation**

23 October 2024

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## References

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### *Legislative references:*

- ITAA 1997 6-5
- ITAA 1997 104-25
- ITAA 1997 118-37(1)(a)
- ITAA 1997 Div 230

### *Cases relied on:*

- Searle v Commonwealth of Australia (No. 9) [2023] NSWSC 215

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### ATO references

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