



Status: **legally binding**

Class Ruling

Maurice Blackburn Pty Limited – Qantas aircrew settlement

❶ 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.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of payments from the Settlement Distribution Fund (SDF) received by former and current Qantas Airways Limited and Qantas Ground Services Pty Limited (Qantas) employees (Employees).
2. Details of this scheme are set out in paragraphs 10 to 19 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 an Employee who received a payment mentioned under this scheme.

When this Ruling applies

5. This Ruling applies from 17 December 2024 to 17 December 2026.

Ruling

6. A payment made from the SDF to an Employee will not be an employment termination payment under section 82-130.

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7. Stage 1 payments are initial payments to all Employees for general damages for hurt, humiliation, pain and suffering caused as a result of the outsourcing decision. Compensation received by an individual for any wrong or injury suffered to their person or in their profession or vocation is exempt from capital gains tax (CGT) under paragraph 118-37(1)(a).¹

8. Stage 2 payments are for economic loss for a period of 12 months that the Employees would have remained employees of Qantas, including base salary, superannuation, redundancy and accrued annual leave. These payments have the characteristics of ordinary income and will be assessable under section 6-5.

9. Stage 3 payments are general damages for non-economic loss for hurt, humiliation, pain and suffering caused as a result of the outsourcing decision. Compensation received by an individual for any wrong or injury suffered to their person or in their profession or vocation is exempt from CGT under paragraph 118-37(1)(a).

Scheme

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

11. Maurice Blackburn Pty Limited (Maurice Blackburn) is the administrator of the SDF. The SDF was established by the transfer of \$120 million from Qantas to Maurice Blackburn, in settlement of proceedings brought by the Transport Workers' Union (TWU) against Qantas over the decision in November 2020 to outsource part of its workforce (outsourcing decision). There are some 1,820 affected Employees from the outsourcing decision.

12. On 30 November 2020, during the COVID-19 pandemic, Qantas decided to outsource to third parties its ground handling and fleet presentation operations at 10 Australian airports. That decision impacted the Employees. The TWU challenged the decision, alleging that it was unlawful as it was made in contravention of paragraph 340(1)(b) of the *Fair Work Act 2009* (FWA). Paragraph 340(1)(b) of the FWA provides that a person must not take 'adverse action' against another person to prevent the exercise of a workplace right by the other person.

13. On 30 July 2021, in *Transport Workers' Union of Australia v Qantas Airways Limited* [2021] FCA 873, Lee J decided that the outsourcing decision made by Qantas contravened paragraph 340(1)(b) of the FWA. Lee J held that Qantas had taken 'adverse action' against the Employees by altering their positions to their prejudice and that a substantial and operative reason for the adverse action was to prevent the Employees exercising certain workplace rights in 2021. The TWU subsequently filed Points of Claim seeking statutory compensation under subsections 545(1) and (2) of the FWA for economic and non-economic loss alleged to have been suffered by the Employees by reason of Qantas' breach of paragraph 340(1)(b) of the FWA.

14. In *Transport Workers' Union of Australia v Qantas Airways Limited (Compensation Claim)* [2024] FCA 1216 (*Compensation Judgment*), Lee J determined the question of compensation by reference to 3 'test case' individuals. His Honour awarded compensation

¹ Taxation Ruling TR 95/35 *Income tax: capital gains: treatment of compensation receipts*.

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under section 545 of the FWA, being compensation for a loss that a person has suffered because of a contravention (of paragraph 340(1)(b) of the FWA), being:

- economic loss for the period of 12 months after each of the test case individuals ceased their employment, and
- non-economic loss arising because of the contravention. For the 3 test case individuals, this loss ranged from hurt, humiliation, distress, irritability, frustration and loss of motivation to anxiety and, in the case of one of the individuals, a major psychiatric illness (major depression including suicide ideation, low mood, anxiety, sleep disturbance, depleted motivation and increased problematic alcohol use) (*Compensation Judgment* at [210]).

15. Of the 1,820 Employees, 1,684 were dismissed from their employment between early 2021 and September 2021. The remaining 136 Employees were redeployed into other roles in Qantas' business.

16. By 'Heads of Agreement – Compensation Settlement' (HOA) dated 17 December 2024, Qantas and the TWU agreed to settle the claim for compensation on behalf of the Employees.

17. The parties gave effect to the HOA by entering into a more detailed Deed of Agreement and Release (Deed) and establishing the SDF as contemplated in the Settlement Administration Principles.

18. The Deed contained the following relevant terms:

- Qantas will transfer \$120 million into the SDF to be managed by Maurice Blackburn.
- Maurice Blackburn will use all reasonable endeavours to complete the administration process within a period of 12 months from its commencement. The process may not extend beyond 24 months from commencement without the agreement of the parties.
- Employees will each have the opportunity to make application to Maurice Blackburn for compensation in respect of the outsourcing Decision.
- Maurice Blackburn will undertake an assessment of the compensation that ought to be due to each Employee who makes an application.
- Each Employee will receive payment, out of the fund of monies held by Maurice Blackburn, of the amount of their assessed entitlement to compensation (or, in the event of a shortfall of such funds, such portion of that assessed entitlement as is able to be paid to them by Maurice Blackburn in accordance with the HOA).
- Each Employee will need to enter into a release in favour of Qantas before receiving any payment.
- After payment of all relevant costs, expenses and liabilities (including those due to Maurice Blackburn), the balance (if any) of the fund of monies held by Maurice Blackburn will be returned to Qantas.

19. Payments to the Employees will occur in 3 stages, as follows:

- Stage 1 – an initial payment to all Employees for general damages for hurt, humiliation, pain and suffering caused as a result of the outsourcing decision. This payment will be made by way of an initial payment at the start of the settlement process and a further smaller payment, to be paid at the

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end of the settlement process, when each Employee enters a release with Qantas. As at 17 October 2025, Maurice Blackburn has paid the initial payment to approximately 1,787 Employees.

- Stage 2 – a payment for economic loss for a period of 12 months that the Employees would have remained employees of Qantas, including base salary, superannuation, redundancy and accrued annual leave. The quantum of this payment will be determined upon review of the evidence from the Employees. Some may not receive any payment since not all suffered economic loss.
- Stage 3 – a further payment of general damages for non-economic loss for hurt, humiliation, pain and suffering caused as a result of the outsourcing decision. This payment would be determined upon review of the evidence from the Employees. In some instances, medical evidence may be sought. Maurice Blackburn has prepared a document setting out 6 agreed categories of general damages and the criteria for compensating the Employees under each of those categories.

Commissioner of Taxation

14 January 2026

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Appendix – Explanation

❶ *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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Employment termination payments

20. Payments made in consequence of the termination of a taxpayer's employment are known as 'employment termination payments'.
21. Subsection 995-1(1) states that an employment termination payment has the meaning given to it by section 82-130.
22. Subsection 82-130(1) states that a payment is an employment termination payment if:
- (a) it is received by you:
 - (i) in consequence of the termination of your employment; or
 - (ii) after another person's death, in consequence of the termination of the other person's employment; and
 - (b) it is received no later than 12 months after that termination (but see subsection (4)); and
 - (c) it is *not* a payment mentioned in section 82-135.
23. All the conditions within subsection 82-130(1) need to be satisfied for a payment to be an employment termination payment.

Payments received 'in consequence of' the termination of employment

24. To be an employment termination payment under subsection 82-130(1), the payment must be received by you:
- in consequence of the termination of your employment, or
 - after another person's death, in consequence of the termination of the other person's employment.
25. The phrase 'in consequence of' is not defined within the *Income Tax Assessment Act 1997*. However, the words have been interpreted by the courts in several cases. Taxation Ruling TR 2003/13 *Income tax: employment termination payments (ETP): payments made in consequence of the termination of any employment: meaning of the phrase 'in consequence of'* explains our view on the meaning of the phrase 'in consequence of' as used in Subdivision 82-C.

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26. The Full High Court of Australia considered the expression 'in consequence of the termination of any employment' in *Reseck v Federal Commissioner of Taxation* [1975] HCA 38 (*Reseck*). The relevant issue in that case was whether amounts paid to a taxpayer by his employer at the end of 2 periods of employment, to which the taxpayer was entitled under an agreement between the employer and the taxpayer's union, were an allowance paid in a lump sum 'in consequence of retirement from, or the termination of, any office or employment ...'. Gibbs J concluded that the amounts were made in consequence of the termination of the taxpayer's employment and said:

Within the ordinary meaning of the words, a sum is paid in consequence of the termination of employment when the payment follows as an effect or result of the termination. ... It is not in my opinion necessary that the termination of the services should be the dominant cause of the payment. ... In the present case the allowance was paid in consequence of a number of circumstances, including the fact that the taxpayer's service had been satisfactory and that the industrial agreements provided for the payment, but it was none the less paid in consequence of the termination of the taxpayer's employment.

27. In the same case, Jacobs J also concluded that the amounts constituted an allowance that was paid in consequence of the termination of the taxpayer's employment. His Honour said:

It was submitted that the words "in consequence of" import a concept that the termination of the employment was the dominant cause of the payment. This cannot be so. A consequence in this context is not the same as a result. It does not import causation but rather a 'following on'.

28. The different interpretations of 'in consequence of' adopted by Gibbs and Jacobs JJ were considered by the Full Federal Court in *McIntosh, Charles v The Commissioner of Taxation* [1979] FCA 65. The matter before the court concerned a taxpayer who, a week after retirement, commuted part of the pension to which he became entitled upon his retirement into a lump sum. The commuted payment was made out of a provident fund established by a bank for the payment of benefits to bank officers on their retirement. The issue being considered by the court was whether the commuted lump sum payment came within former paragraph 26(d) of the *Income Tax Assessment Act 1936*.

29. In *McIntosh, Charles v The Commissioner of Taxation* [1979] FCA 65, Brennan J considered the judgments of Gibbs and Jacobs JJ in *Reseck*. He concluded that their Honours were both saying that a causal nexus between the termination and payment was required, though it was not necessary for the termination to be the dominant cause of the payment. Brennan J said:

Though Jacobs J. speaks in different terms, his meaning may not be significantly different from the meaning of Gibbs J. ... His Honour denies the necessity to show that retirement is the dominant cause, but he does not allow a temporal sequence alone to suffice as the nexus. Though the language of causation often contains the seeds of confusion, I apprehend his Honour to hold the required nexus to be (at least) that the payment would not have been made but for the retirement.

30. In the same case, Lockhart J stated:

In my opinion, although the phrase is sufficiently wide to include a payment caused by the retirement of the taxpayer, it is not confined to such a payment. The phrase requires that there be a connection between the payment and the retirement of the taxpayer, the act of retirement being either a cause or an antecedent of the payment. The phrase used in s. 26(d) is not "caused by" but "in consequence of". It has a wider connotation than causation and assumes a connection between the circumstance of retirement and the act of payment such that the payment can be said to be a "following on" of the retirement.

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31. TR 2003/13 considers the divergent views as to the correct interpretation of the phrase ‘in consequence of’ as interpreted by the courts. This is explained within paragraphs 5 to 7 of TR 2003/13, which state:

5. ... a payment is received by a taxpayer in consequence of the termination of the taxpayer’s employment if the payment ‘follows as an effect or result of’ the termination. In other words, but for the termination of employment, the payment would not have been received by the taxpayer.

6. The phrase requires a causal connection between the termination and the payment, although the termination need not be the dominant cause of the payment. The question of whether a payment is received in consequence of the termination of employment will be determined by the relevant facts and circumstances of each case.

7. The greater the length of time between the termination of employment and the payment, the more likely that the causal connection between the termination and the payment will be too remote for a conclusion that a payment was received in consequence of the termination of employment. However, length of time will not be determinative when there is a presently existing right to payment of the amount at the time of termination.

Payments made from the Settlement Distribution Fund

32. In accordance with the scheme, payments from the SDF will be made to affected Employees. The payments are compensatory in nature, with the prime purpose of restoring Employees to their pre-contravention position.

33. Our view is the Stage 1–3 compensation payments were not made ‘in consequence of’ the termination of the Employees’ employment. This conclusion is based on the statutory framework and relevant judicial findings.

34. Although payments will be made under the HOA and administered by Maurice Blackburn following execution of the Deed, they reflect the Federal Court’s determination that Qantas’ outsourcing decision contravened paragraph 340(1)(b) of the FWA, not the termination itself.

35. Compensation was awarded under paragraph 545(2)(b) of the FWA, which permits orders for loss suffered *because of* a contravention. Lee J, in *Compensation Judgment*, confirmed that compensation must be causally linked to the contravention of paragraph 340(1)(b) of the FWA.

36. The outsourcing decision, found to be adverse action under table item 1(c) of section 342 of the FWA, preceded and precipitated most terminations but was not itself a termination decision. Employees were offered options including redundancy, redeployment or job swaps. While most were ultimately terminated, not all were, and termination was a consequence of implementing the outsourcing – not the contravention.

37. In *Compensation Judgment*, Lee J noted ‘[t]he implementation of the outsourcing decision meant that the vast majority of the Qantas-employed ground handlers were sacked’.

38. We therefore regard the outsourcing and the terminations to be distinct events, with the former being the proximate cause of the compensation.

39. On balance, we find that the causal connection required for the payments to be ‘in consequence of’ termination is not established.

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Stage 1 and 3 payments – compensation

40. Stage 1 payments are an initial payment to all Employees for general damages for hurt, humiliation, pain and suffering caused as a result of the outsourcing decision. Stage 3 payments are further payments of general damages for hurt, humiliation, pain and suffering caused as a result of the outsourcing decision. Stage 1 and Stage 3 payments are compensatory capital receipts that are exempt from CGT under paragraph 118-37(1)(a) and are not otherwise assessable income.

41. Section 6-10 provides that amounts that are not ordinary income but are included in assessable income by specific provisions of the income tax law are called statutory income. Capital gains are included as assessable income under section 102-5.

42. Paragraph 108-5(1)(b) specifically includes a legal or equitable right within the definition of a CGT asset. A taxpayer's right to seek compensation is therefore classified as an intangible CGT asset which is acquired at the time of the compensable wrong or injury.

43. Section 104-25 provides that CGT event C2 happens on the ending of the right to seek compensation – that is, the right to take legal action, when it is satisfied, surrendered, released or discharged.

44. Taxation Ruling TR 95/35 *Income tax: capital gains: treatment of compensation receipts* provides our view on the CGT consequences for recipients of compensation amounts. It discusses the various scenarios, including:

- disposal of the underlying asset
- compensation for permanent damage to, or permanent reduction in value of, the underlying asset, and
- disposal of the right to seek compensation.

45. Paragraph 11 of TR 95/35 states that if the amount of compensation is not received in respect of any underlying asset, the amount relates to the disposal by the taxpayer of the right to seek compensation.

46. Paragraph 18 of TR 95/35 states that if the amount received is an undissected lump sum, the whole amount is treated as being consideration received on the disposal of the right to seek compensation.

47. Paragraph 188 of TR 95/35 states the whether the receipt constitutes income or capital in the hands of the taxpayer depends on the circumstances of the receipt and the reasons why it was paid to the taxpayer.

48. Paragraph 28 of TR 95/35 states that it is likely that some information is available when a compensation claim is made which can be used to dissect a lump sum amount of compensation. Alternatively, the components of the lump sum ordinarily are able to be estimated or valued on a reasonable basis.

49. Paragraph 118-37(1)(a) disregards payments or receipts for capital gains purposes where the amount relates to compensation or damages a person receives for any personal wrong, injury or illness, to 'his or her person'.

50. Paragraph 214 of TR 95/35 states that the terms 'to his or her person' and 'in his or her vocation' should be read as widely as possible. The intention of the wide interpretation was to cover the full range of employment and professional type claims, such as claims for discrimination, harassment, victimisation, wrongful dismissal and defamation, as well as personal injury or illness.

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51. Paragraph 21 of TR 95/35 outlines that if compensation is received by a taxpayer in a lump sum paid in settlement of a number of claims, including a personal injury claim, and its individual components cannot be determined or reasonably estimated, no part of the compensation can be quantified as relating to the personal injury of the taxpayer.

52. Paragraph 215 of TR 95/35 outlines that compensation for personal injury for damages is generally received for the loss of earning capacity rather than for loss of income.

53. Where it can be shown that all the separate heads of claim relate to the personal injury of the taxpayer and that there are no other non-personal elements of compensation within the total claim, the exemption under section 118-37 would apply.

54. The anti-double-taxation provisions contained in section 118-20 apply to prevent double taxation. The provision reduces a capital gain arising from a CGT event to the extent that an amount has already been included in the assessable income of a taxpayer – for example, being included as assessable income under section 6-5.

Stage 2 payments – ordinary income

55. Stage 2 payments are for economic loss for a period of 12 months that the Employees would have had they remained employees of Qantas, including base salary, superannuation, redundancy and accrued annual leave. These payments have the characteristics of ordinary income and will be assessable under section 6-5.

56. Subsection 6-5(2) provides that the assessable income of an Australian resident includes the ordinary income derived directly or indirectly from all sources, whether in or out of Australia, during the income year.

57. An amount paid to compensate for loss generally acquires the character of that for which it is substituted (*Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65). Compensation payments which substitute income have been held by the courts to be income under ordinary concepts (*Commissioner of Taxation v Inkster, H. M.* [1989] FCA 626 and *Tinkler v Commissioner of Taxation* [1979] FCA 136).

58. Lump sum damages or out-of-court settlements may be a compromise of a claim made up of a number of items, some being of a revenue nature and others of a capital nature. If different components of a lump sum compensation payment can be identified, those components that are of an income nature, such as those to compensate for loss of income, are assessable as such.

59. Taxation Determination TD 93/58 *Income tax: under what circumstances is the receipt of a lump sum compensation/settlement payment assessable?* outlines the circumstances under which the receipt of a lump sum compensation or settlement payment is assessable as ordinary income. It states that where the compensation payment is for loss of income, the amount is assessable as ordinary income. Where a portion of a lump sum payment is identifiable and quantifiable as income, that portion of the payment will be assessable.

60. Applying the general principles contained in Taxation Ruling IT 2424 *Income tax: compensation payments in respect of unlawful acts of discrimination*, if the payment is intended to be a payment in relation to income, either past or future, then the payment is revenue in nature.

61. Paragraph 8 of IT 2424 states:

By way of general comment the determination of the character of a compensation payment, and in particular whether it is liable to tax in the hands of an employee, depends upon the

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nature of the payment. A compensation payment to make up for lost earnings or in substitution for income which would otherwise have been earned is in the nature of income and is liable to income tax in the hands of the employee. On the other hand a payment to compensate for personal injury, injury to feelings, humiliation, embarrassment, depression, anxiety, etc. is not liable to income tax. It is a payment of a capital nature. Nor is the payment liable to tax under the capital gains tax provisions by reason of the exemption provided in sub-section 160ZB(1) for compensation or damages paid for wrong or injury suffered by a taxpayer to his or her person or in his or her profession or vocation.

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References

Related rulings and determinations:

IT 2424; TD 93/58; TR 95/35; TR 2003/13

Legislative references:

- ITAA 1936 former 26(d)
- ITAA 1997 6-5
- ITAA 1997 6-5(2)
- ITAA 1997 6-10
- ITAA 1997 Subdiv 82-C
- ITAA 1997 82-130
- ITAA 1997 82-130(1)
- ITAA 1997 82-135
- ITAA 1997 102-5
- ITAA 1997 104-25
- ITAA 1997 108-5(1)(b)
- ITAA 1997 118-20
- ITAA 1997 118-37
- ITAA 1997 118-37(1)(a)
- ITAA 1997 995-1(1)
- Fair Work Act 2009 340(1)(b)
- Fair Work Act 2009 342
- Fair Work Act 2009 342(1)(c)
- Fair Work Act 2009 525(2)
- Fair Work Act 2009 545
- Fair Work Act 2009 545(1)

- Fair Work Act 2009 545(2)(b)

Cases relied on:

- Commissioner of Taxation v Inkster, H. M. [1989] FCA 626; 24 FCR 53; 89 ATC 5142; 20 ATR 1516; (1989) 89 ALR 137
- Commissioner of Taxation (Cth) v Dixon [1952] HCA 65; 86 CLR 540; [1953] ALR 17; (1952) 10 ATD 82; (1952) 26 ALJR 505
- McIntosh, Charles v The Commissioner of Taxation [1979] FCA 65; 45 FLR 279; 79 ATC 4325; 10 ATR 13; (1979) 25 ALR 557
- Reseck v Federal Commissioner of Taxation [1975] HCA 38; 133 CLR 45; 75 ATC 4213; 5 ATR 538; (1975) 6 ALR 642
- Tinkler v Commissioner of Taxation [1979] FCA 136; 40FLR 116; 79 ATC 4641; 10 ATR 411; (1979) 29 ALR 663
- Transport Workers' Union of Australia v Qantas Airways Limited [2021] FCA 873; (2021) 308 IR 244
- Transport Workers' Union of Australia v Qantas Airways Limited (Compensation Claim) [2024] FCA 1216; (2024) 334 IR 187

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