

CR 2002/59 - Income tax: compensation payments to Holocaust survivors and their relatives - Remembrance, Responsibility and Future Foundation

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Class Ruling

Income Tax: compensation payments to Holocaust survivors and their relatives – Remembrance, Responsibility and Future Foundation

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a **Ruling** is a public ruling and how it is binding on the Commissioner.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

What this Class Ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law dealt with in this Ruling is subsection 118-37(1) *Income Tax Assessment Act 1997* (‘ITAA 1997’).

Class of persons

3. The class of persons to which this Ruling applies is persons receiving payments from the Remembrance, Responsibility and Future Foundation (the Foundation) because they personally suffered wrong, injury or property damage or because they are relatives or eligible heirs of persons who suffered wrong, injury or property damage.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 9 to 10 in this Ruling.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this ruling:
 - (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
 - (b) this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies from 1 July 2000.

Arrangement

9. The Remembrance, Responsibility and Future Foundation was set up by the German Parliament. The practical effect of the legislation is that payments, of up to 15,000 deutschmarks, will be made to applicants who were:
 - (a) detained in a concentration camp (or equivalent) and subjected to forced labour;

- (b) deported from their native country to the territory of the German Reich and subjected to forced labour in an industrial or commercial enterprise; or
- (c) in the course of racial persecution, suffered property loss.

An additional payment of 15,000 deutschmarks may be received by applicants who were victims of medical experiments.

10. Compensation may be awarded to either the individual who suffered the injury, wrong or property damage directly, or the surviving spouse, children, grandchildren or siblings of that individual. If no application is filed by these persons the heirs named in a will are entitled to apply.

Ruling

11. Lump sum payments relating to personal injury or wrongs that are received by the person who suffered the wrong or injury, or their relatives, will not be liable for income tax or give rise to capital gains consequences.

12. Lump sum payments relating to personal injury or wrongs that are received after 1 July 2001 by eligible heirs of the person who suffered the wrong or injury will not give rise to capital gains consequences (see section 118-37(4) of the ITAA 1997).

13. Lump sum payments relating to property damage will not give rise to income or capital gains consequences where they are received by the original owner of the property.

14. Lump sum payments relating to property damage that are received after 1 July 2001 will not give rise to capital gains consequences in respect of that receipt where they are received by the relatives or eligible heirs of the person who owned the property (see section 118-37(4) of the ITAA 1997).

Explanations

15. The payment of a single lump sum does not generally constitute income under ordinary concepts for the purposes of section 6-5 of the ITAA 1997. However, payment of the lump sum falls for consideration under subsection 6-10(4) which includes statutory income as assessable income.

Personal injury

16. Receipt of the lump sum payment may give rise to a capital gain (statutory income) under CGT event C2 (see section 104-25 of the ITAA 1997) which concerns cancellation, surrender and similar endings. However, under paragraph 118-37(1)(b) of the ITAA 1997, a capital gain made from a CGT event which relates directly to compensation or damages received for any wrong, injury or illness suffered by a person or a relative of that person is disregarded.

'Relative' is defined under section 995-1 of the ITAA 1997 as :

- (a) a person's spouse;
- (b) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person or of that person's spouse; or
- (c) the spouse of a person referred to in paragraph (b).

17. In this case, the compensation received is for a wrong, namely for injustices inflicted on slave labourers and forced labourers and a large number of other human rights violations. The compensation is received directly by the person who suffered these wrongs, or that person's relative, and is therefore exempt under paragraph 118-37(1)(b).

18. However, paragraph 118-37(1)(b) does not extend to compensation received by persons who are eligible heirs but not relatives of the victim of the injury or wrong. These persons can be classed as receiving a payment for surrendering a right. However, subsection 118-37(4) of the ITAA 1997 expressly makes these payments exempt from CGT for the 2001-2002 and later income years.

Property damage

19. Where the compensation is for property damage and the person receiving the compensation had an interest in the underlying property or an entity with such an interest, at the time of the loss or damage, any compensation receipt would have a direct and substantial link with the underlying property. The look-through approach in Taxation Ruling TR 95/35 applies to render any capital gain exempt because of the underlying property's pre-CGT status.

20. However, where a relative or heir of the original owner of the property receives a payment, capital gains consequences would arise as the relevant asset disposed of in this case is the right to be considered for compensation under the Remembrance, Responsibility and Future Foundation law rather than the underlying property. However, subsection 118-37(4) of the ITAA 1997 expressly makes

these payments exempt from CGT for the 2001-2002 and later income years.

Detailed contents list

21. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

4 September 2002

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/16;
TR 95/35

Subject references:

- compensation
- assessable income

Legislative references:

- ITAA 1997 995-1
- ITAA 1997 6-5
- ITAA 1997 6-10(4)
- ITAA 1997 118-37(1)
- ITAA 1997 118-37(1)(b)
- ITAA 1997 118-37(4)
- TAA 1953 Pt IVA
- Copyright Act 1968

ATO References

NO: 2002/012393

ISSN: 1445 2014