



CR 2002/60 - Income tax: compensation payments to Holocaust survivors and their relatives - the Stichting Maror-gelden Overheid Foundation

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Class Ruling

Income Tax: compensation payments to Holocaust survivors and their relatives – the Stichting Maror-gelden Overheid 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.*

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 compensation from the Stichting Maror-gelden Overheid Foundation (the Maror fund) either as a concerned party or as a *substitute* of a concerned party.

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 - (b) this Ruling may be withdrawn or modified.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 Maror fund was set up in 2000 to rectify identified deficiencies in the post-World War II restoration of justice. There are two types of applicants under this scheme. The criteria for eligibility as a concerned party are that the individual was born before 8 May 1945, resided in the Netherlands for some time between 10 May 1940 and 8 May 1945 and has at least one Jewish parent and two Jewish grandparents on the side of that Jewish parent OR was subject to persecution or looting in the Netherlands as a result of being Jewish. Children and spouses of a concerned party are eligible to be considered as a substitute if the concerned party died on or after 8 May 1945.

10. Every concerned party receives a lump sum payment of approximately US \$5,800. Substitutes for the same concerned party share a portion of this amount. Two further payments (an interim payment and a final payment) may become available to both concerned parties and substitutes at the discretion of the Boards of the

Foundations. Where the compensation relates to property that was looted, no proof of the amount looted is required.

Ruling

11. Lump sum payments received from the Maror fund by concerned parties or a substitute where the substitute is a relative of the concerned party will not be liable for income tax or give rise to capital gains consequences.
12. Lump sum payments received by a substitute who is not a relative of the concerned party will give rise to capital gains consequences.

Explanations

13. 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.
14. A payment received from the Maror fund by a concerned party or a substitute of a concerned party (who is a relative) 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).
15. In this case, the compensation received is for a wrong suffered by the taxpayer directly (when payment is received as a concerned party) or for a wrong suffered by the taxpayer's relative (when payment is received as a substitute). The 'wrong' suffered for the purposes of paragraph 118-37(1)(b) is persecution (including looting which can be categorised as a manifestation of hatred), as a result of

living in the Netherlands during the Second World War and being of Jewish descent. Therefore, the initial lump sum payment (and also the possible two subsequent payments) received by a concerned party or a substitute, where the substitute is a relative of the concerned party is exempt from CGT.

16. However, paragraph 118-37(1)(b) does not extend to compensation received by persons who are substitutes but not relatives of the victim of the injury or wrong. These persons can be classed as receiving a payment for surrendering a right under CGT event C2. The right in question is the right to be considered for payment under the articles of association of the Maror fund. Capital gains consequences may arise where the capital proceeds received exceed the cost base.

Detailed contents list

17. 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:

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

Subject references:

- assessable income
- compensation

Legislative references:

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

ATO References
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