

# ***CR 2002/61 - Income tax: compensation payments to Holocaust survivors and their relatives - French Ministry of Defence Fund for Orphans***

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! This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

! This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*



## Class Ruling

### Income Tax: compensation payments to Holocaust survivors and their relatives – French Ministry of Defence Fund for Orphans

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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**

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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 laws dealt with in this Ruling are paragraph 23(kca)(iii) of the *Income Tax Assessment Act 1936* (‘ITAA 1936’) and subsection 118-37(1) of the *Income Tax Assessment Act 1997* (‘ITAA 1997’).

#### **Class of persons**

3. The class of persons to which this Ruling applies is persons receiving compensation under the French Fund established by Decree no 2000-657 of 13 July 2000 as a means of reparation for orphans the parents of whom were victims of antisemitic persecutions.

#### **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 11 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

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8. This Ruling applies from 1 July 2000.

## Arrangement

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9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Decree no 2000-657 of 13 July 2000 issued by the French Prime Minister.

10. A compensation fund established by the French Government on 13 July 2000 provides payments to persons who were orphaned as a result of deportations of one or both parents because of antisemitic persecutions during the German occupation of France. A person has a right to reparation if they were a minor of less than 21 years at the time when the deportation took place. Claims must include the

necessary documentation to demonstrate a family relationship with the deceased or lost parent.

11. The reparation takes the form of a benefit, to be chosen by the beneficiary, of a lump sum amount or of monthly payments for life.

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## **Ruling**

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12. Monthly payments will not be liable for income tax.

13. Lump sum payments will not be liable for income tax or capital gains tax.

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## **Explanations**

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### **Monthly payments**

14. Pensions, annuities and allowances which are paid as compensation for persecution, during the Second World War, of the recipient or another person, or flight from such persecution, are specifically exempted from income tax under paragraph 23(kca) (iii) of the ITAA 1936. Therefore, recipients who choose to receive a monthly payment under this scheme will not be liable for income tax.

### **Lump sum payments**

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.

16. A payment received by a person in respect of becoming an orphan as a result of antisemitic persecutions may give rise to a capital gain (statutory income) under CGT event C2 (see section 104-25 of the ITAA 1997) which relates to cancellation, surrender or similar endings. However, under paragraph 118-37(1)(b) of the ITAA 1997, a capital gain made from a CGT event in relation to compensation or damages received for any wrong, injury or illness suffered by a person or a relative of that person is disregarded.

17. In this case, the compensation received is for a wrong suffered by the taxpayer's relative (deportation and/or death as a result of antisemitic persecution). 'Relative' is defined in section 995-1 of the ITAA 1997 and includes a person's parent. Alternatively, the compensation could be regarded as being for a wrong suffered by the

taxpayer directly (that is, loss of parent or guardian). In either case, the capital gain is disregarded under paragraph 118-37(1)(b).

## **Detailed contents list**

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

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### **Commissioner of Taxation**

4 September 2002

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*Previous draft:*

Not previously issued in draft form

*Related Rulings/Determinations:*

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

*Subject references:*

- compensation
- assessable income

*Legislative references:*

- ITAA 1936 23 (kca) (iii)
- 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

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ATO References

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