

CR 2003/35 - Income tax: capital gains: compensation receipts - Indigenous Wages and Savings Reparations Process

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Class Ruling

Income tax: capital gains: compensation receipts – Indigenous Wages and Savings Reparations Process

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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 ATO 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 laws dealt with in this Ruling are section 6-5, section 6-10, section 102-5, section 104-25 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 from the Queensland Government through the Indigenous Wages and Savings Reparations Process being conducted from early 2003 to 30 June 2006.

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 13 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- (b) This Ruling may be withdrawn or modified.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 2002. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the Gazette;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

9. The Queensland Government proposes to make an offer of monetary compensation to individual Aboriginal and Torres Strait Islander and other persons whose wages and savings were controlled, until 1986, under a legislative regime generally known as the 'Protection Acts'.

10. Those accepting the offer will be required to enter into a Deed of Agreement with the State of Queensland. Amongst other things, the Deed will provide:

'The Claimant acknowledges and agrees that he/she accepts the payment in full and final satisfaction and discharge of all actions, suits, claims, costs and demands which the claimant, and all other persons claiming by or through or under the Claimant may now have or could have, whether pursuant to common law or under the Protection Acts, against the State, its servants or agents ...'

11. Claimants born before 31 December 1956, who were alive at 9 May 2002 and who had their wages and/or savings controlled under the Protection Acts, will be eligible to claim compensation under the Queensland Government Indigenous Wages and Savings Reparations Process.

12. Claimants born on or before 31 December 1951 and who meet the necessary criteria will be paid a one off lump sum payment of \$4,000. Claimants born between 1 January 1952 and 31 December 1956 (inclusive) and who meet the necessary criteria will be eligible for a one off lump sum payment of \$2,000.

12A. On the 25 March 2008, the Queensland Government announced a second round of payments for successful claimants in the Indigenous Wages and Savings Reparations Process. The second round Reparations Offers were:

- \$3,000 to people who previously received a \$4,000 reparations payment, or
- \$1,500 to people who previously received a \$2,000 reparations payment.

13. The lump sum payment is not intended to replace moneys alleged to be lost or stolen. It is intended to compensate for the loss, injustice and racially discriminatory impact of past control of wages and/or savings under the Protection Acts.

Ruling

14. Lump sum payments made to eligible persons by the Queensland Government under the Indigenous Wages and Savings Reparations Process will not be assessable as ordinary income under section 6-5 of the ITAA 1997 and will not be included in the calculation of a net capital gain under section 102-5 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. The proposed payments under the Indigenous Wages and Savings Reparations Process do not possess the characteristics of income, rather they have the character in each recipient's hands of a lump sum compensation or settlement receipt. As such, they fall for consideration under subsection 6-10(4) of the ITAA 1997 which includes statutory income as assessable income.

16. Statutory income includes a net capital gain calculated under section 102-5 of the ITAA 1997. In broad terms a net capital gain is the difference between a person's capital gains and losses for an income year.

17. Generally a capital gain or capital loss is made when a CGT event happens. CGT event C2 in section 104-25 of the ITAA 1997 happens if an intangible CGT asset ends by being cancelled, discharged or satisfied. If that event happens a capital gain (or loss) equal to the difference between the proceeds from the ending of the asset and its cost base (reduced cost base) may arise. A capital gain or loss is disregarded if the asset was acquired before 20 September 1985.

18. The right to sue in respect of any alleged loss, injustice or racially discriminatory impact suffered is considered to be an intangible CGT asset owned by a person entitled to compensation under the Queensland Government Indigenous Wages and Savings Reparations Process. The right is taken to have been acquired when the suffering occurred. In the majority of cases this happened before 20 September 1985 and accordingly any capital gain or loss from the ending of the right will be disregarded.

19. To the extent that the rights disposed of were not acquired before 20 September 1985, then the application of exemptions in, subsection 118-37 (1) needs to be considered. Paragraph 118-37(1)(a) of the ITAA 1997 disregards a capital gain or capital loss from a CGT event which relates directly to compensation or damages received for

any wrong or injury suffered by a person in their occupation. Paragraph 118-37(1)(b) of the ITAA 1997 disregards a capital gain or capital loss from a CGT event which relates directly to compensation or damages received by an individual for any wrong or injury suffered personally by that individual or their relative.

20. In this case, the compensation received is for a wrong suffered by the recipient either in their occupation or personally. The 'wrong' suffered for the purposes of paragraphs 118-37(1)(a) or (b) of the ITAA 1997 is the loss, injustice or discrimination arising from the control of their wages and/or savings under 'the Protection Acts'. Therefore, the lump sum payment is exempt from CGT.

20A. The second round payments are additional capital proceeds for the original CGT event which occurred at the time of the first payment.

Detailed contents list

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

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Commissioner of Taxation

7 May 2003

Previous draft

Not previously released in draft form

Related Rulings/Determinations

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

Subject references

- assessable income
- compensation
- capital gains tax
- CGT event
- CGT exemptions

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Legislative references

- ITAA 1953 Pt IVAAA
 - ITAA 1997 6-5
 - ITAA 1997 6-10 (4)
 - ITAA 1997 102-5
 - ITAA 1997 104-25
 - ITAA 1997 118-37(1)
 - ITAA 1997 118-37(1)(a)
 - ITAA 1997 118-37(1)(b)
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ATO references

NO: 2003/005006
ISSN: 1445-2014