


***CR 2008/37 - Income tax: assessable income:
payments received under the Redress Scheme for
former residents of State care in Western Australia***

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Class Ruling

Income tax: assessable income: payments received under the Redress Scheme for former residents of State care in Western Australia

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❶ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 104-25 of the ITAA 1997; and
- paragraph 118-37(1)(b) of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is individuals who receive a payment under the Western Australian Government's Redress Scheme for former residents of State care in Western Australia.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 23 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 May 2008 to 30 June 2010.

9. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The following description of the scheme is based on information provided by the applicant. This description is based on:

- an application for Class Ruling from the Department of Communities (Western Australia);
- information obtained from the internet website address: www.redress.wa.gov.au;
- correspondence received via email from the applicant dated 20 February 2008; and
- draft Deed of Settlement and Release received on 27 March 2008.

14. The Redress Scheme for former residents of State care in Western Australia was announced on 17 December 2007 by the Western Australian Government and provides a one-off payment to eligible former residents of State care in Western Australia to acknowledge the impact of past abuse and neglect. The scheme is known as Redress WA.

15. Applicants under Redress WA are limited to individuals who satisfy the eligibility criteria, including those who:

- are over 18 years of age or are the guardian of a person aged over 18 years of age with a legal disability (for example an intellectual disability); and
- experienced abuse and or neglect as children in State care in Western Australia, either institutional or non-institutional (including Child Migrants and Stolen Generation children) prior to 1 March 2006.

16. State care includes those facilities that were subsidised, monitored, registered or approved by the Western Australian State Government such as:

- foster homes or other residential settings; and

- institutional settings such as group homes, hostels or orphanages.

17. Individuals who have already received a payment from a non-government organisation (for example, a religious institution) are still eligible to apply to Redress WA.

18. Individuals who have received:

- a payment of compensation for personal damages from a Court; or
- a settlement from the Western Australian State Government;

as compensation for the types of abuse and injuries described in the application for Redress WA, are not eligible to apply.

19. Relatives of deceased persons (or the estates of deceased persons) who were in State care in Western Australia are not eligible to apply.

20. Applications under Redress WA will be accepted from 1 May 2008 and close on 30 April 2009.

21. Individuals who are assessed as meeting the eligibility criteria will be offered a payment based on the severity and impact of the abuse suffered. Redress WA Assessors will assess claims and the amount offered will comprise:

- a payment of up to \$10,000 if the available evidence shows a reasonable likelihood that the applicant experienced abuse and/or neglect while in State care in Western Australia; or
- a payment of up to \$80,000 if medical and/or psychological evidence is provided that the applicant was physically, sexually, emotionally, or psychologically abused and/or neglected while in State care in Western Australia.

22. The payment will be made subject to the applicant signing a 'Deed of Settlement and Release' intended to indemnify the Minister and the State of Western Australia from any current or future legal claims arising in relation to the alleged abuse.

23. Once an applicant accepts an offer of payment under Redress WA and signs the Deed of Settlement and Release, they are entitled to receive the payment.

Ruling

Section 6-5 – income according to ordinary concepts

24. A lump sum payment made by the Western Australian Government under Redress WA to former residents of State care in Western Australia is not assessable as ordinary income under section 6-5.

Capital gains tax

25. CGT event C2 under section 104-25 happens to the entitlement to receive a payment under Redress WA, when the entitlement is satisfied.

26. However, any capital gain or capital loss made as a result of receiving a payment under Redress WA is disregarded under paragraph 118-37(1)(b).

Commissioner of Taxation

21 May 2008

Appendix 1 – Explanation

❶ *This Appendix 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.*

Section 6-5 – income according to ordinary concepts

27. A payment is assessable income if:
- it is income in the ordinary sense of the word (*ordinary income*); or
 - it is not ordinary income but through the operation of the legislation it is included in assessable income (*statutory income*).

Ordinary income

28. Ordinary income received by a person is included in their assessable income under section 6-5.
29. The legislation does not provide specific guidance on the meaning of ordinary income. However, a substantial body of case law exists which identifies likely characteristics. Amounts that are periodical, regular or recurrent and relied upon by the recipient for their regular expenditure are likely to be ordinary income, as are amounts that are the product of any employment of, or services rendered by, the recipient (*Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392).
30. Payments under Redress WA are one-off lump sum payments in the nature of compensation or settlement sums. They do not possess the characteristics of ordinary income. Therefore the payments will not be assessable as ordinary income.

Statutory income

31. An amount that is not ordinary income may still be assessable income as a result of the operation of section 6-10 which includes statutory income in assessable income.

Capital gains tax

32. Statutory income includes a net capital gain calculated under section 102-5. In broad terms a net capital gain is the difference between a person's capital gains and capital losses for an income year.
33. Generally a capital gain or capital loss is made when a capital gains tax (CGT) event happens to a CGT asset.

34. The entitlement to receive a payment under Redress WA is a CGT asset under section 108-5. The entitlement arises when an applicant has done everything necessary to be entitled to the payment including:

- making an application; and
- satisfying the eligibility criteria.

35. CGT event C2 under section 104-25 happens when the entitlement to receive a payment under Redress WA comes to an end which is when the entitlement is satisfied. This would be the point in time when the Deed of Settlement and Release is signed.

36. However, any capital gain or capital loss made as a result of CGT event C2 is disregarded under paragraph 118-37(1)(b) when the CGT event relates directly to compensation or damages received for any wrong, injury or illness you suffer personally.

37. The treatment for CGT purposes of compensation receipts for personal wrong or injury is discussed in paragraphs 19 to 22 of Taxation Ruling TR 95/35 Income tax: capital gains: treatment of compensation receipts. In particular, paragraph 20 of TR 95/35 provides that CGT exemption is available if the taxpayer receives compensation in an undissected lump sum which relates wholly to the personal wrong or injury suffered by the taxpayer.

38. A payment under Redress WA is made to compensate eligible former residents of State care in Western Australia for the impact of past institutional abuse and neglect experienced while they were residents in State care.

39. Therefore, any capital gain or capital loss arising from the CGT event is disregarded under paragraph 118-37(1)(b) as it relates wholly to compensating individuals for personal wrong, injury or illness.

Appendix 2 – Detailed contents list

40. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 95/35

Subject references:

- income
- capital gains tax
- CGT events
- CGT exemptions
- CGT events C1-C3 – end of a CGT asset
- statutory compensation scheme
- compensation for injury
- compensation income

Legislative references:

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-10
- ITAA 1997 102-5
- ITAA 1997 104-25
- ITAA 1997 108-5
- ITAA 1997 118-37(1)(b)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Case references:

- Federal Commissioner of Taxation v. Rowe (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392

ATO references

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ATOLaw topic: Income Tax ~~ Assessable income ~~ other payments
Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 – end of a CGT asset
Income Tax ~~ Capital Gains Tax ~~ exemptions other than main residence
Income Tax ~~ Exempt income ~~ compensation and ex gratia payments