


***CR 2011/53 - Income tax: capital gains:
compensation receipts - Indigenous Wages and
Savings Reparations Process (Queensland) -
reopened process***

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Class Ruling

Income tax: capital gains: compensation receipts – Indigenous Wages and Savings Reparations Process (Queensland) – reopened process

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 recipients of payments from the Queensland Government under the Indigenous Wages and Savings Reparations Process conducted under the reopened process announced by the Queensland Government on 12 August 2008 (the reopened IWSRP).

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 10 to 15 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 12 August 2008 to 30 June 2010. The Ruling continues to apply after 30 June 2010 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Previous Rulings

9. Class Ruling CR 2003/35 was issued in respect of payments made by the Queensland Government to indigenous persons under the Indigenous Wages and Savings Reparations Process conducted from early 2003 to 30 June 2006.

Scheme

10. The following description of the scheme is based on information provided by the applicant.

11. In 2002 the Queensland Government announced a proposal to offer 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'. The compensation scheme was called the Indigenous Wages and Savings Reparations Process (the IWSRP). On 12 August 2008 the Queensland Government announced a reopened process (the reopened IWSRP). Payments commenced in September 2008 and continued until 30 June 2010.

12. Individuals born on or before 31 December 1956, who were alive at 9 May 2002 and who had their wages and/or savings controlled under the Protection Acts (eligible individuals), were eligible to claim compensation under the reopened IWSRP.

13. Where an eligible individual has died before applying, provision has been made for relatives to apply on the basis that any payment will be made to:

- the next of kin as identified in the *Succession Act 1981* (Qld) where the deceased died intestate,
- the executor of the deceased estate if the deceased left a will and the estate was still being administered, or
- the beneficiaries of the deceased where the deceased's legal personal representative was no longer acting for the estate.

14. In respect of eligible individuals born on or before 31 December 1951 who met the relevant criteria a one off lump sum payment of \$7,000 was paid. In respect of eligible individuals born between 1 January 1952 and 31 December 1956 (inclusive) and who met the relevant criteria a one-off lump sum payment of \$3,500 was paid.

15. The lump sum payments were not intended to replace moneys alleged to have been lost or stolen. They were intended to compensate for the loss, injustice and racially discriminatory impact of past control of wages and/or savings under the Protection Acts.

16. Those accepting the offer were required to enter into a Deed of Agreement with the State of Queensland. Amongst other things, the Deed provided:

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...

Ruling

Ordinary income

17. Lump sum payments made to eligible persons by the Queensland Government under the reopened IWSRP is not ordinary income under section 6-5.

Capital gains tax

18. CGT event C2 (section 104-25) happens when a person receives a lump sum payment under the reopened IWSRP.

19. A capital gain or capital loss made from the receipt of the lump sum payment is disregarded in full under paragraph 118-37(1)(b) if the payment goes to the eligible individual, or direct from the Queensland Government to a relative (as defined in the ITAA 1997) of the eligible individual.

20. A capital gain or capital loss made by the legal personal representative of the eligible individual's deceased estate is disregarded under paragraph 118-37(1)(b) to the extent that a relative (as defined in the ITAA 1997) is to benefit from the estate.

Commissioner of Taxation

8 June 2011

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.*

21. A payment or other benefit received by a taxpayer is included in assessable income if it is:

- income in the ordinary sense of the word (*ordinary income*); or
- an amount or benefit that through the operation of the provisions of the tax law is included in assessable income (*statutory income*).

Ordinary income

22. The payment of a single lump sum does not generally constitute income under ordinary concepts for the purposes of section 6-5. Payments made under the reopened IWSRP do not possess the characteristics of ordinary income, rather they have the character in each recipient's hands of a lump sum compensation or settlement receipt.

Capital gains tax

23. CGT event C2 (section 104-25) happens when the entitlement to receive a payment under the reopened IWSRP ends upon its satisfaction. However, a capital gain (statutory income) or loss made when CGT event C2 happens is disregarded under paragraph 118-37(1)(b) if the CGT event is in relation to compensation or damages received for any wrong, injury or illness suffered by a person or a relative (as defined in subsection 995-1(1)) of that person.

24. Payments under the reopened IWSRP are made as compensation for the loss, injustice, and racially discriminatory impact of past control of wages and/or savings of an eligible individual under the Protection Acts. Therefore, any capital gain or capital loss made by an eligible individual, or a relative (as defined in subsection 995-1(1)) of that person is disregarded under paragraph 118-37(1)(b). Where the legal personal representative of the deceased eligible individual makes the capital gain it is disregarded under paragraph 118-37(1)(b) to the extent a relative as defined in subsection 995-1(1) is to benefit under the estate.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

- statutory compensation scheme
- compensation income

Related Rulings/Determinations:

TR 2006/10; CR 2003/35

Legislative references:

Subject references:

- income
- capital gains tax
- CGT events
- CGT exemptions
- CGT events C1-C3 – end of a CGT asset

- ITAA 1997 6-5
- ITAA 1997 104-25
- ITAA 1997 118-37(1)(b)
- ITAA 1997 995-1(1)
- ITAA 1953
- Copyright Act 1968
- Succession Act 1981 (Qld)

ATO references

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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