


# ***CR 2012/117 - Income tax: tax treatment of payments to members of the Australian Construction Industry Redundancy Trust***

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## Class Ruling

# Income tax: tax treatment of payments to members of the Australian Construction Industry Redundancy Trust

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### **① 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

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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 82-130 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 82-135 of the ITAA 1997;
- section 83-170 of the ITAA 1997;
- section 83-175 of the ITAA 1997;
- section 83-295 of the ITAA 1997;
- section 995-1 of the ITAA 1997;
- section 97 of the *Income Tax Assessment Act 1936* (ITAA 1936); and
- section 98A of the ITAA 1936.

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

## **Class of entities**

3. The class of entities to which this Ruling applies is members of the Australian Construction Industry Redundancy Trust (ACIRT) who receive payments under the scheme described in paragraphs 10 to 28.

## **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 28 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**

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8. This Ruling applies from 1 July 2012 to 30 June 2018. The Ruling continues to apply after 30 June 2018 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

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9. This Ruling replaces CR 2009/28, which ceased to apply from 1 July 2012.

## Scheme

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

11. The Australian Construction Industry Redundancy Trust (ACIRT) is an Australian resident trust fund governed by a trust deed (the Trust Deed) which established the fund in Australia. The central management and control of the fund is in Australia.

12. The trustee of ACIRT is ACIRT Pty Ltd (the trustee), an Australian resident company.

13. Employers can fully fund or partially offset their obligations for employee redundancy benefits that they are required to make under various industrial awards and enterprise agreements, by the payment of contributions to ACIRT.

14. ACIRT is an approved worker entitlement fund for fringe benefits tax (FBT) purposes.

15. An employer can apply to the trustee for admission to ACIRT and must complete a Deed of Adherence to become a participating employer in ACIRT.

16. ACIRT accepts contributions from participating employers, on a monthly basis, for each week of service in respect of which contributions are legally payable for that month.

17. Under clause 4.1 of the Trust Deed, the amount to be contributed by the participating employer in respect of each member is:

- the minimum contribution, which is defined in clause 1.1 of the Trust Deed;
- an amount required for the member's redundancy benefit as provided in an industrial instrument;
- such higher contribution specified in the Deed of Adherence; or
- such contribution specified in the Deed of Adherence until the total amount as specified in the Deed of Adherence has been contributed.

18. The definition of 'Member' in clause 1.1 of the Trust Deed states:

**'Member'** means an Employee in respect of whom a Participating Employer is obliged or may under an Enterprise Agreement or Industrial Agreement contribute to the Fund who has been admitted to membership of the Fund and whose membership of the Fund has not ceased in accordance with the terms of the Fund.

19. As outlined in clause 5.1 of the Trust Deed, all contributions made to ACIRT by employers are placed into separate member accounts identifying contributions for that member.

20. Subject to any accumulation of income under clause 19(1)(c) of the Trust Deed ACIRT distributes all of its income each year after payment of expenses to members under clause 19(1)(a) of the Trust Deed.

21. The income distribution made to members in accordance with clause 19.1(a) of the Trust Deed is paid directly to the members and is not credited to the members' accounts in ACIRT.

22. A member who terminates employment is entitled to a payment under clause 19.2 of the Trust Deed.

23. Clause 19.2 of the Trust Deed states:

A Member who was made Redundant, is entitled to a payment of the amount standing to the Member Account of the Member where:

- (a) claim for payment is made within twelve (12) months of being made Redundant; or
- (b) the Member leaves the Industry.

24. The term 'redundant' is defined under clause 1.1 of the Trust Deed as:

'Redundancy' or 'Redundant' means, the termination or cessation of employment of a Member for any reason other than where paragraphs (a) or (b) of clause 17.1 applies.

25. The term 'leaving the industry' is defined under clause 1.1 of the Trust Deed as:

'Leaving the industry' means ceasing employment:

- (a) with an Employer that has paid contributions to the Fund; or
- (b) with any employer in the Construction Industry, and having no intention to become employed by another Employer.

26. Under Clause 19.2 of the Trust Deed a member entitled to payment must make a claim for payment:

- (a) within twelve (12) months of being made Redundant; or
- (b) when the member leaves the industry.

27. Contributions made to ACIRT by employers and payments made from ACIRT to a member under clause 19.2 of the Trust Deed do not include, and are not in lieu of, any of the payments which are not employment termination payments as listed in section 82-135. That is, a contribution to ACIRT and a payment of a benefit from ACIRT is not:

- a superannuation benefit;
- a pension or annuity payment
- an unused annual leave payment;
- an unused long service leave payment;
- the tax-free amount of a genuine redundancy payment or early retirement scheme payment;
- a foreign termination payment;
- a CGT exempt amount under the small business retirement exemption;
- an advance or a loan;
- an amount deemed to be a dividend;
- a capital payment for, or in respect of, personal injury;
- a capital payment for, or in respect of, a legally enforceable contract in restraint of trade;
- a commutation of a pension payable from a constitutionally protected fund wholly applied in paying superannuation contributions surcharge;
- a commutation of a pension payable by a superannuation provider wholly applied in paying superannuation contributions surcharge; or
- an amount that is assessable as part of an employee share scheme.

28. Under clauses 11.1 and 11.2 of the Trust Deed, members can transfer the benefits they have accumulated in another scheme into ACIRT where permitted by the other scheme and that other scheme is an approved worker entitlement fund.

## **Ruling**

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29. A payment made to a member of ACIRT under clause 19.2(a) of the Trust Deed will be made 'in consequence of' the termination of the employment of the member. If the payment is received within 12 months of that termination (subject to any determination that the Commissioner may make), it will be an employment termination payment as defined under subsection 82-130(1).

30. A payment made to a member under clause 19.2(b) of the Trust Deed will be made 'in consequence of' the termination of the employment. If the payment is received within 12 months of terminating employment with a participating employer (subject to any determination that the Commissioner may make), it will be an employment termination payment as defined under subsection 82-130(1).

31. A payment made to a member under clause 19.2 of the Trust Deed will not be a genuine redundancy payment under subsection 83-175(1).

32. Consequently, the tax-free treatment of genuine redundancy payments under section 83-170 is not available in respect of payments made to a member of ACIRT under clause 19.2 of the Trust Deed.

33. A payment made to a member under clause 19.2 of the Trust Deed that is received more than twelve months after the termination of the employment of the member (subject to any determination that the Commissioner may make), will not be an employment termination payment unless paragraph 34 of this ruling applies. If paragraph 34 of this ruling does not apply, the payment will be assessable income under section 83-295 and subject to marginal rates of tax.

34. A payment made to a member under clause 19.2 of the Trust Deed that is received more than twelve months after the termination of the employment of the member (subject to any determination that the Commissioner may make), will be an employment termination payment as defined under subsection 82-130(1) where:

- a claim for the payment is lodged with ACIRT within 12 months of the employee becoming entitled to the payment and the payment; and
- the payment is made no later than the period allowed in Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2009 (SPR 2009/1). Under SPR 2009/1 the payment must be made as soon as practicable after receipt of the application for the payment or no later than 2 years after the termination of the person's employment whichever occurs earlier.

35. Where a member not under any legal disability is presently entitled to a share of the net income of the Fund, that share of the net income will be assessable income of the member under subsection 97(1) or subsection 98A(1) of the ITAA 1936 (unless the member is under legal disability).

36. Where the net income is distributed to the member under clause 19.1(a) of the Trust Deed, such a distribution is not an employment termination payment in the hands of the member.

37. Where a member of ACIRT not under any legal disability is presently entitled to a share of the income of the Fund, but is a non-resident at the end of the income year, the trustee is also assessable on that share of the net income (subsections 98(2A) and 98(3) of the ITAA 1936). However, the member is entitled to a credit or refund for the amount of tax paid by the trustee (subsection 98A(2) of the ITAA 1936).

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**Commissioner of Taxation**

12 December 2012

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## Appendix 1 – Explanation

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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.***

### **Employment termination payment**

38. Payments made in consequence of the termination of a taxpayer’s employment are known as employment termination payments.

39. Section 995-1 states that:

employment termination payment has the meaning given by section 82-130.

40. Subsection 82-130(1) states:

A payment is an employment termination payment if:

- (a) it is received by you:
  - (i) in consequence of the termination of your employment; or
  - (ii) after another person’s death, in consequence of the termination of the other person’s employment; and
- (b) it is received no later than 12 months after the termination (but see subsection (4)); and
- (c) it is not a payment mentioned in section 82-135.

41. Therefore, it can be seen that a number of conditions need to be satisfied in order for the payment to be treated as an employment termination payment.

42. Failure to satisfy any of the conditions will result in the payment not being considered an employment termination payment.

### **In consequence of employment termination**

43. The first criterion to be considered is that the payment is received by the person in consequence of the termination of their employment.

44. The phrase ‘in consequence of’ is not defined in the legislation. However, the words have been interpreted by the courts in several cases. The Commissioner has also issued Taxation Ruling TR 2003/13 which discusses the meaning of the phrase.

45. The Full High Court of Australia considered the expression 'in consequence of the termination of any employment' in *Reseck v. Federal Commissioner of Taxation* (1975) 49 ALJR 370; (1975) 6 ALR 642; (1975) 5 ATR 538; (1975) 75 ATC 4213; (1975) 133 CLR 45 (*Reseck*). The relevant issue in that case was whether amounts paid to a taxpayer by his employer at the end of two periods of employment, to which the taxpayer was entitled under an agreement between the employer and the taxpayer's union, were an allowance paid in a lump sum 'in consequence of retirement from, or the termination of, any office or employment ...'. Justice Gibbs concluded that the amounts were made in consequence of the termination of the taxpayer's employment. His Honour said that:

Within the ordinary meaning of the words, a sum is paid in consequence of the termination of employment when the payment follows as an effect or result of the termination ... It is not in my opinion necessary that the termination of the services should be the dominant cause of the payment ... In the present case the allowance was paid in consequence of a number of circumstances, including the fact that the taxpayer's service had been satisfactory and that the industrial agreements provided for the payment, but it was none the less paid in consequence of the termination of the taxpayer's employment.

46. Justice Jacobs also concluded that the amounts constituted an allowance that was paid in consequence of the termination of the taxpayer's employment. His Honour said:

It was submitted that the words 'in consequence of' import a concept that the termination of the employment was the dominant cause of the payment. This cannot be so. A consequence in this context is not the same as a result. It does not import causation but rather a 'following on'.

47. The different interpretations of 'in consequence of' adopted by Justices Gibbs and Jacobs were considered by the Full Federal Court in *McIntosh v. Commissioner of Taxation* (1979) 25 ALR 557; (1979) 10 ATR 13; (1979) 45 FLR 279; (1979) 79 ATC 4325 (*McIntosh*). The matter before the court concerned a taxpayer who one week after retirement, commuted part of the pension to which he became entitled upon his retirement, into a lump sum. The commuted payment was made out of a provident fund established by a bank for the payment of benefits to bank officers on their retirement. The issue being considered by the court was whether the commuted lump sum payment came within former paragraph 26(d) of the ITAA 1936.

48. Justice Brennan considered the judgments of Justices Gibbs and Jacobs in *Reseck* and concluded that their Honours were both saying that a causal nexus between the termination and payment was required, though it was not necessary for the termination to be the dominant cause of the payment. Justice Brennan said:

Though Jacobs J. speaks in different terms, his meaning may not be significantly different from the meaning of Gibbs J... His Honour denies the necessity to show that retirement is the dominant cause, but he does not allow a temporal sequence alone to suffice as the nexus. Though the language of causation often contains the seeds of confusion, I apprehend his Honour to hold the required nexus to be (at least) that the payment would not have been made but for the retirement.

49. In the same case, Justice Lockhart stated:

In my opinion, although the phrase is sufficiently wide to include a payment caused by the retirement of the taxpayer, it is not confined to such a payment. The phrase requires that there be a connection between the payment and the retirement of the taxpayer, the act of retirement being either a cause or an antecedent of the payment. The phrase used in section 26(d) is not 'caused by' but 'in consequence of'. It has a wider connotation than causation and assumes a connection between the circumstance of retirement and the act of payment such that the payment can be said to be a 'following on' of the retirement.

50. Taxation Ruling TR 2003/13 *Income tax: eligible termination payments (ETP): payments made in consequence of the termination of any employment: meaning of the phrase 'in consequence of'* considers the divergent views as to the correct interpretation of the phrase 'in consequence of' as interpreted by the Courts. Paragraph 5 of TR 2003/13 states:

...the Commissioner considers that a payment is made in respect of a taxpayer in consequence of the termination of the employment of the taxpayer if the payment 'follows as an effect or result of' the termination. In other words, but for the termination of employment, the payment would not have been made to the taxpayer.

51. As further stated by the Commissioner in paragraphs 6 and 7 of TR 2003/13:

6. The phrase requires a causal connection between the termination and the payment, although the termination need not be the dominant cause of the payment ...

7. The greater the length of time between the termination of employment and the payment, the more likely that the causal connection between the termination and the payment will be too remote for a conclusion that a payment was made in consequence of the termination of employment. However, length of time will not be determinative when there is a presently existing right to payment of the amount at the time of termination ...

52. The question of whether a payment is made in consequence of the termination of employment will be determined by the relevant facts and circumstances of each case.

53. Clause 19.2 of the Trust Deed provides for the payment to the member of the amount standing to the credit of the member's account where a claim for the benefit is made within twelve (12) months of being made redundant or where the member leaves the industry.

54. The term 'redundant' is defined under clause 1.1 of the Trust Deed as:

**'Redundancy'** or **'Redundant'** means, the termination or cessation of employment of a Member for any reason other than where paragraphs (a) or (b) of clause 17.1 applies.

55. As noted, the definition of 'Member' in clause 1.1 of the Trust Deed states:

**'Member'** means an Employee in respect of whom a Participating Employer is obliged or may under an Enterprise Agreement or Industrial Agreement contribute to the Fund who has been admitted to membership of the Fund and whose membership of the Fund has not ceased in accordance with the terms of the Fund.

56. Consequently in order to lodge a redundancy claim with the Fund a member needs to have terminated employment with a participating employer.

57. Paragraph (a) of clause 17.1 of the Trust Deed deals with the situation where a participating employer is dissolved or wound up and another company, person or firm agrees to undertake the obligations of the participating employer in respect of the ACIRT. Paragraph (b) deals with the situation where another company, person or firm acquires all or part of the undertaking and assets of a participating employer and agrees to undertake the obligations of the participating employer in respect of the ACIRT.

58. A member whose employment was terminated and did not lodge a claim for the amount standing to the credit of their account within twelve months of that termination, can make a claim if:

- the member is re-employed by a participating employer in the industry and their employment with the subsequent employer is terminated; or
- the member leaves the industry.

59. As noted, the term 'leaving the industry' is defined in clause 1.1 of the Trust Deed as:

**'Leaving the industry'** means ceasing employment:

- (a) with an Employer that has paid contributions to the Fund; or
- (b) with any employer in the Construction Industry,

and having no intention to become employed by another Employer.

60. The definition of 'Employer' in clause 1.1 of the Trust Deed states:

**'Employer'** means a person liable to pay or wishing to pay contributions to the Fund in respect of its employees employed in the Construction Industry or allied industries.

61. Where a member claims a payment either on 'redundancy' or on 'leaving the industry' it is a necessary precondition that the member's employment with that participating employer is terminated. Therefore, it is considered that there is sufficient causal nexus between the making of the payments under clause 19.2 of the Trust Deed and the termination of the member's employment to conclude that the payments are made in consequence of the relevant termination of employment. The termination of the employment and the subsequent payment of the benefit are interwoven – but for the termination of employment, the payment would not have been made to the member.

### ***Received no later than 12 months after the termination***

62. Paragraph 82-130(1)(b) requires that the payment must be received no later than 12 months after the termination of the employment.

63. In the present case, provided the payments made under either clause 19.2(a) or 19.2(b) of the Trust Deed are received within 12 months of the termination of the member's employment with that participating employer (subject to any determination that the Commissioner may make), then the payments will qualify as employment termination payments.

64. However, subsection 82-130(4) allows the Commissioner to determine, in writing, that paragraph 82-130(1)(b) does not apply. Under subsection 82-130(7) the Commissioner may, by legislative instrument, determine that paragraph 82-130(1)(b) does not apply.

65. Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2009 (SPR 2009/1) determined that paragraph 82-130(1)(b) does not apply to a payment received from a redundancy trust if:

- an application for the payment is lodged with the trustee of the redundancy trust within 12 months of the member becoming entitled to the payment under the terms of the trust deed of the redundancy trust; and
- the payment is made by the trustee of the redundancy trust:
  - as soon as practicable after receipt of the application for payment; or
  - no later than two years after the termination of the person's employment that led to the entitlement;

- whichever occurs earlier.

66. For the purposes of SPR 2009/1 a redundancy trust is a workers entitlement fund that was established prior to 1 April 2003 or a prescribed members entitlement fund listed in Schedule 3 to the Fringe Benefits Tax Regulations 1992. ACIRT is such a fund.

67. Consequently, provided an application for the payment under either clause 19.2(a) or 19.2(b) of the Trust Deed is lodged with ACIRT within 12 months of the member becoming entitled to the payment and the payment is made no later than the period allowed in the legislative instrument, subject to any determination that the Commissioner may make, the payment will (subject to meeting the other conditions of subsection 82-130(1)) be an employment termination payment.

#### **Not a payment mentioned in section 82-135**

68. Section 82-135 lists payments that are not employment termination payments. These include (amongst others):

- superannuation benefits;
- unused annual leave or long service leave payments;
- foreign termination payments covered under Subdivision 83-D; and
- the tax free part of a genuine redundancy payment or an early retirement scheme payment.

69. As stated in paragraph 27 the payment made to a member under clause 19.2 of the Trust Deed does not include any of the payments listed in section 82-135. The paragraphs following this provide the explanation as to why the payment is not a genuine redundancy payment.

#### **Genuine redundancy payments**

70. As payments made under clause 19.2(a) of the Trust Deed are paid when a member is made redundant (as defined under clause 1.1 of the Trust Deed) consideration is required as to whether these payments also qualify as genuine redundancy payments under section 83-170.

71. A payment made to an employee after 30 June 2007 will be a genuine redundancy payment if it satisfies all criteria set out in section 83-175. Section 83-175 replaces former section 27F of the ITAA 1936 where such payments were referred to as bona fide redundancy payments.

72. Subsection 83-175(1) states:

A genuine redundancy payment is so much of a payment received by an employee who is dismissed from employment because the employee's position is genuinely redundant as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of dismissal.

73. Under subsection 83-175(1), a genuine redundancy payment is a payment resulting from:

- a dismissal; and
- a redundancy.

74. The terms 'dismissal' and 'redundancy' are not defined in the. Therefore, it is necessary to consider the common law or ordinary meaning of the terms and the meaning the judicial authorities have ascribed to each word.

75. The Explanatory Memorandum to the *Income Tax Assessment Amendment Act (No. 3) 1984* which inserted former section 27F into the ITAA 1936 states at page 91:

The terms 'dismissal' and 'redundancy' are not defined in the legislation and, therefore, should be given their ordinary meanings. 'Dismissal' carries with it the concept of the involuntary (on the taxpayer's part) termination of employment. 'Redundancy' carries the concept that the requirements of the employer for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where they were so employed, have ceased or diminished or are expected to cease or diminish. Redundancy, however, would not extend to the dismissal of an employee for personal or disciplinary reasons or for reasons that the employee was inefficient.

76. Taxation Ruling TR 2009/2 *Income tax: genuine redundancy payments* examines what constitute a 'dismissal' and 'redundancy'. This ruling outlines the Commissioners view of the requirements that need to be satisfied before any payment made to a person whose employment is terminated qualifies for treatment as a genuine redundancy payment under section 83-175. Genuine redundancy payments are the equivalent of *bona fide* redundancy payments in the former section 27F of the ITAA 1936

77. The terms 'redundancy' and 'leaving the industry' as defined in clause 1.1 of the Trust Deed, simply refer to the termination or cessation of employment of the member for any reason. Accordingly, it is not possible to conclude whether or not a member has been dismissed because their position is genuinely redundant. This would have to be determined by the relevant facts and circumstances of each case.

78. However, even if the termination of employment satisfies the requirements for a genuine redundancy, it is only that part of the payment that exceeds the amount that could reasonably be expected to be received by the employee had the employee voluntarily terminated his or her employment at the time of dismissal that will be treated as a genuine redundancy payment.

79. As already noted, the definition of 'redundancy' and 'leaving the industry' in the Trust Deed entitle a member to the payment of their account balance on the cessation of their employment for any reason. Thus payments may be made to a member for various events including resignation, retirement from the workforce, etc.

80. This means that, for example, where an employee of a participating employer resigns that employee can receive the balance of their member account.

81. Consequently, no part of the amount payable under clause 19.2 of the Trust Deed would exceed the amount of an employment termination payment that could reasonably be expected to have been made in relation to the taxpayer had he or she voluntarily terminated their employment at that time. Thus, there will not be a genuine redundancy payment in relation to the member.

82. A payment made in accordance with clause 19.2 of the Trust Deed does not satisfy section 83-175 for the following reasons:

- it is not paid to the member for being dismissed due to genuine redundancy; or
- in the case that it is paid on the occasion of genuine redundancy, the payment does not exceed the amount of an employment termination payment that could reasonably be expected to have been made, if the member terminated employment voluntarily.

83. As the payments made under clause 19.2 of the Trust Deed are not genuine redundancy payments there will not be any tax-free part of a genuine redundancy payment under section 83-170. Accordingly, the employment termination payment exclusion under paragraph 82-135(e) will not apply.

84. Therefore, subject to the payments being received within 12 months of the termination of the member's employment (subject to any determination that the Commissioner may make), then the payments are employment termination payments.

85. However, if an application for a payment under either clause 19.2(a) or 19.2(b) of the Trust Deed is lodged with ACIRT within 12 months of the member becoming entitled to the payment and the payment is made no later than the period allowed in the legislative determination, subject to any determination that the Commissioner may make, the payment will (subject to meeting the other conditions of subsection 82-130(1)) be an employment termination payment.

## Income

86. In broad terms the purpose of Division 6 of Part III of the ITAA 1936 is to ensure the trustee or beneficiary pay the income tax on the net income of a trust in the income year in which it is derived.

87. Generally, beneficiaries not under any legal disability are liable to income tax if 'presently entitled to a share of the income of the trust'. The trustee will be taxed if beneficiaries are under a legal disability or do not have present entitlement in relation to a share of the income of the trust.

88. Subsection 97(1) of the ITAA 1936, or, if a beneficiary is a non-resident at the end of the income year, subsection 98A(1) of the ITAA 1936 operate where a beneficiary of a trust is not under any legal disability and is 'presently entitled to a share of the income of the trust estate', with the effect that the assessable income of the beneficiary shall include:

- (a) so much of that share or proportion of the net income of the trust as is attributable to a period when the beneficiary was a resident; and
- (b) so much of that share or proportion of the net income of the trust as is attributable to a period when the beneficiary was not a resident and is also attributable to sources in Australia.

89. Where a member of ACIRT, not under any legal disability, is presently entitled to a share of the income of ACIRT, but is a non-resident at the end of the income year, the trustee is also assessable on that share or proportion of the net income under subsection 98(3) of the ITAA 1936. However, the member is entitled to a credit or refund under subsection 98A(2) of the ITAA 1936 for the amount of tax paid by the trustee.

90. A distribution under clause 19.1(a) of the Trust Deed by ACIRT of the net income included in the assessable income of a member is not an employment termination payment.

## **Appendix 2 – Detailed contents list**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2009/2; TR 2006/10;  
TR 2003/13

*Subject references:*

- distributions
- employment termination
- employment termination payments
- genuine redundancy payments
- income
- redundancy and retrenchment
- trust beneficiaries
- trust distributions
- trust income
- trusts
- worker entitlement funds

*Legislative references:*

- ITAA 1936 26(d)
- ITAA 1936 27F
- ITAA 1936 97
- ITAA 1936 97(1)
- ITAA 1936 Pt III Div 6
- ITAA 1936 98(3)
- ITAA 1936 98A
- ITAA 1936 98A(1)
- ITAA 1936 98A(2)
- ITAA 1936 98(2A)
- ITAA 1997 82-130
- ITAA 1997 82-130(1)
- ITAA 1997 82-130(1)(b)

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