



CR 2013/78 - Fringe benefits tax and income tax: employer contributions to the ReddiFund

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Class Ruling

Fringe benefits tax and income tax: employer contributions to the ReddiFund

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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.

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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 taxation provisions dealt with in this Ruling are:
- section 58PA of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
 - section 8-1 of the *Income tax Assessment Act 1997* (ITAA 1997); and
 - section 6-5 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies is employers who make a contribution to the ReddiFund for an employee who is a member of the ReddiFund.

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 9 to 14 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.

Date of effect

7. This Ruling applies from 9 May 2013. 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

8. This ruling replaces Class Ruling CR 2012/28, Fringe benefits tax and income tax: employer contributions to the WA Construction Industry Redundancy (No. 2) Fund, which applied to contributions made to the WA Construction Industry Redundancy (No. 2) Fund (WACIRF No.2) during the period 1 April 2011 to 8 May 2013 inclusive.

Scheme

9. The following description of the scheme is based on CR 2012/28 and the following documents, or relevant parts thereof. These being:
 - WACIRF No.2 Trust Deed (Principal Trust Deed) and Regulations (Fund Regulations);
 - Deed of amendment No. 5 (Trust Deed and Regulations) dated 9 May 2013;
 - email request for amendment of Class Ruling 2012/28 dated 13 May 2013; and

- Deed of Amendment No. 6 (Trust Deed and Regulations) dated 12 July 2016.

10. WACIRF No. 2 was established in March 2004 to receive contributions from employers in the Western Australian construction industry who are required to provide redundancy entitlements for their employees pursuant to various awards and industrial agreements.

11. The relevant awards under which industrial agreements had been made in respect of the WACIRF No. 2 included:

- the National Building and Construction Industry Award 2000 (NBCIA);
- the Building Trades (Construction) Award 1987, Western Australia (BTCA);
- the Plumbing Industry (QLD and WA) Award 1999 (PIA);
- the Building and Construction General On-Site Award 2010 (BCGOSA);
- the Plumbing and Fire Sprinklers Award 2010 (PFSA).

12. The WACIRF No. 2 was prescribed as being an approved worker entitlement fund with effect from 1 April 2003 by Fringe Benefits Tax Amendment Regulation 2004 (No 3) (51 of 2004).

13. The WACIRF No. 2 was endorsed as an approved worker entitlement fund under subsection 58PB(2) of the FBTA with effect from 28 June 2011.

14. The Deed of Amendment No 5 (Trust Deed and Regulations), dated 9 May 2013, altered the WACIRF No.2 Trust Deed and Regulations to:

- change of the name of the WACIRF No. 2 to 'ReddiFund';
- change of the name of the trustee company (Trustee of the WACIRF No.2 from WA Construction Industry Fund Limited to 'ReddiFund Limited';
- amend subclause 4.4 of the Principal Trust Deed to extend the kind of person to whom the Trustee may pay a 'death benefit' to include not only a 'legal personal representative' but also the spouse, former spouse or child (less than 18), of a deceased 'Participating Employee';
- amend regulation 4.1 of the Fund Regulations to extend the kind of person to whom the Trustee may pay a 'death benefit' to include not only a 'legal personal representative' but also the spouse, former spouse or child (less than 18), of a deceased 'Participating Employee';

- insert new regulation 7 of the Fund Regulations to give the Trustee an administrative discretion to make changes to the formatting or wording of forms used in the administration of the ReddiFund.

14A. The Deed of Amendment No. 6 (Trust Deed and Regulations) dated 12 July 2016, altered the ReddiFund (formerly WACIRF No. 2) Trust Deed and Regulations to:

- amend various industry related definitions in paragraph A of the Introduction and subclauses 1.3, 1.17(b) and 13.3(a)(iii) of the Principal Trust Deed; and
- insert regulation 4.6 into the Fund Regulations which entitles the 'Participating Employee Members' of the Fund who are entitled to a 'Redundancy Payment' to apply to have the payment deferred until such time as they make a 'Drawdown Request'.

Ruling

15. The payment of a contribution to the ReddiFund by an employer pursuant to an 'industrial instrument', as that term is defined in subsection 136(1) of the FBTAA, will be an exempt benefit under section 58PA of the FBTAA.

16. Provided the contribution to the ReddiFund does not relate to the earning of exempt income or non-assessable non-exempt income, an employer who pays a contribution to the ReddiFund pursuant to an award or industrial agreement will be entitled to claim a deduction under section 8-1 of the ITAA 1997 for the amount of the contribution.

17. A refund of contributions made to the ReddiFund by an employer in respect of a person who has ceased to be an employee of the employer will be assessable income under section 6-5 of the ITAA 1997 at the time the amount is derived by the employer.

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.*

Will a contribution made to the ReddiFund pursuant to an award or to an industrial agreement be an exempt benefit under section 58PA of the FBTAA?

18. Section 58PA of the FBTAA sets out the conditions that must be satisfied for a contribution to the ReddiFund to be an exempt benefit.

19. Section 58PA of the FBTAA states:

If:

- (a) a person makes a contribution to an approved worker entitlement fund; and
- (b) the contribution is made under an industrial instrument; and
- (c) the contribution is either:
 - (i) made for the purposes of ensuring that an obligation under the industrial instrument to make leave payments (including payments in lieu of leave) or payments when an employee ceases employment is met; or
 - (ii) for the reasonable administrative costs of the fund;

the contribution is an exempt benefit.

20. Therefore, for contributions to the ReddiFund to be exempt benefits under section 58PA of the FBTAA all of the following requirements must be met:

- (a) the ReddiFund is an approved worker entitlement fund.
- (b) the contribution to the ReddiFund is made under an industrial instrument.
- (c) the contribution is made to the ReddiFund to ensure that an obligation is met to make leave payments or to meet payments when an employee ceases employment (or to meet the reasonable administrative expenses of the fund).

Is the ReddiFund an approved worker entitlement fund?

21. The WACIRF No. 2 was endorsed as an approved worker entitlement fund under subsection 58PB(2) of the FBTAA with effect from 28 June 2011.

22. It is considered that none of the amendments, listed at paragraphs 14 and 14A, made to the Principal Trust Deed and the Fund Regulations, including the changes of name of the fund and of the Trustee, alter the endorsed status of the relevant fund as an approved worker entitlement fund.

23. Therefore, the ReddiFund is an approved worker entitlement fund under subsection 58PB(2) of the FBTAA and this requirement is met.

Is the contribution to the ReddiFund made under an industrial instrument?

24. Paragraph 58PA(b) of the FBTAA requires the contribution to be made under an industrial instrument. The term 'industrial instrument' is defined in subsection 136(1) of the FBTAA to mean:

a law of the Commonwealth or of a State or Territory or an award, order, determination or industrial agreement in force under any such law.

25. A contribution to the ReddiFund will be made pursuant to the terms of an award or an industrial agreement. The question of whether the particular award or industrial agreement under which the contribution was made to the ReddiFund comes within the defined term 'industrial instrument' is, however, a question of fact. In the absence of evidence to the contrary in a particular case, it is accepted that a contribution made to the ReddiFund pursuant to the terms of an award or industrial agreement will be made under an 'industrial instrument'.

26. This requirement is met.

Is the contribution to the ReddiFund made to ensure that an obligation is met to make leave payments or to meet payments when an employee ceases employment (or to meet the reasonable administrative expenses of the fund)?

27. Paragraph 58PA(c) of the FBTAA requires that the contribution is either for:

- the purpose of ensuring that an obligation that arises under the industrial instrument to make leave payments or payments when an employee ceases employment is met; or
- for the reasonable administrative expenses of the fund.

28. This requirement is met where the employer makes a contribution to the ReddiFund to meet the employer's obligation to make a redundancy or severance payment under a relevant industrial instrument.

Conclusion regarding a contribution made to the ReddiFund pursuant to an award or to an industrial agreement

29. A contribution paid by an employer to the ReddiFund pursuant to an award or to an industrial agreement that is an 'industrial instrument', as that term is defined in subsection 136(1) of the FBTA, will be an exempt benefit under section 58PA of the FBTA as all the necessary requirements are met.

Is an employer who makes a contribution to the ReddiFund pursuant to an award or to an industrial agreement entitled to claim a deduction for the amount of the contribution under section 8-1 of the ITAA 1997?

30. Subsection 8-1(1) of the ITAA 1997 enables an employer to claim a deduction for a loss or outgoing that is incurred:

- in gaining or producing assessable income; or
- in carrying on a business for the purpose of gaining or producing assessable income.

31. However, subsection 8-1(2) of the ITAA 1997 prevents a deduction being claimed under subsection 8-1(1) of the ITAA 1997 where the loss or outgoing is:

- (i) a loss or outgoing of a capital, private or domestic nature; or
- (ii) incurred in gaining or producing exempt income or non-assessable non-exempt income; or
- (iii) where a provision of the ITAA 1997 prevents a deduction from being claimed.

32. Therefore, an employer who makes the relevant type of contribution will be entitled to claim a deduction under section 8-1 of the ITAA 1997 for a contribution to the ReddiFund where the following requirements are met:

- (a) the contribution is a loss or outgoing that falls within subsection 8-1(1) of the ITAA 1997; and
- (b) a deduction for the contribution is not otherwise prevented under subsection 8-1(2) of the ITAA 1997

Is a contribution to the ReddiFund a loss or outgoing that falls within subsection 8-1(1) of the ITAA 1997?

33. Where an employer makes a contribution to the ReddiFund in order to fulfil an obligation imposed on the employer by an award or industrial agreement the employer does so to meet an obligation that arises from carrying on a business.

34. Therefore, where the business is carried on for the purpose of gaining or producing assessable income, the contribution will come within subsection 8-1(1) of the ITAA 1997 and this requirement will be met.

Does subsection 8-1(2) of the ITAA 1997 prevent a deduction from being claimed for a contribution to the ReddiFund?

35. As advised above, at paragraph 31, any of the following three circumstances prevents a deduction being claimed:

- (i) a loss or outgoing of a capital, private or domestic nature; or
- (ii) incurred in gaining or producing exempt income or non-assessable non-exempt income; or
- (iii) where a provision of the ITAA 1997 prevents a deduction from being claimed.

Is a contribution to the ReddiFund a loss or outgoing of a capital, private or domestic nature?

36. In discussing whether a payment to a superannuation fund was capital, Hill J. in *Walstern v. Federal Commissioner of Taxation* [2003] FCA 1428; 2003 ATC 5076; (2003) 4 ATR 423 (*Walstern*) said:

However, it cannot be said that the question whether a payment is a one-off payment or whether it is a recurrent payment is a matter irrelevant to whether the outgoing is capital. In a case such as the present where the payment operates to create the capital of a trust fund the outlay will ordinarily be seen as capital both because of the lasting qualities enjoyed and the fact that what is being made is a final payment to secure future benefits. However, if a contribution is one of a number of 'recurrent' contributions for employees, so that it can be seen to be part of the ordinary flow of business expenditure of a taxpayer, the character of the outlay will take on a different complexion.

37. In applying these comments, the contributions that are paid to the ReddiFund can be distinguished from the payment in the decision in *Walstern* . In that case the payment operated to create the capital of a trust fund. By contrast, the contributions paid to the ReddiFund are recurrent payments that are part of the ordinary flow of business expenditure as they are paid to discharge an obligation imposed on the employer by an award or industrial instrument. As such, the contributions are revenue in nature.

38. Similarly, the contributions paid to the ReddiFund will not be of a private or domestic nature as they are paid in relation to employees engaged in the business of their employer. As such, they are an employment expense that is treated in the same manner as the payment of salary or wages or other forms of employee remuneration.

Is a contribution to the ReddiFund a loss or outgoing incurred in gaining or producing exempt income or non-assessable non-exempt income?

39. The question of whether a contribution is a loss or outgoing incurred in gaining or producing exempt income or non-assessable non-exempt income will be a question of fact that will depend upon the employer's circumstances.

Does a provision of the ITAA 1997 prevent a deduction from being claimed for the contribution to the ReddiFund?

40. No provisions of the ITAA 1997 prevent a deduction being claimed for a contribution to the ReddiFund where that contribution is made pursuant to an industrial award or agreement.

Conclusion on whether subsection 8-1(2) of the ITAA 1997 prevents a deduction being claimed for a contribution to the ReddiFund?

41. Subsection 8-1(2) of the ITAA 1997 does not prevent a deduction being claimed for a contribution to the ReddiFund as none of the relevant circumstances, as listed above in paragraph 35, apply.

Conclusion on whether an employer who makes a contribution to the ReddiFund pursuant to an award or to an industrial agreement is entitled to claim a deduction for the amount of the contribution under section 8-1 of the ITAA 1997

42. Provided a contribution does not relate to the earning of exempt income or non-assessable non-exempt income, an employer who makes a contribution to the ReddiFund pursuant to an industrial award or agreement will be entitled to claim an income tax deduction for the amount of the contribution.

Will the refund of a contribution made to the ReddiFund form part of the employer's assessable income?

43. A refund of contributions under regulation 4.3 (Schedule E) of the Principal Trust Deed will be made where an employee has not been engaged in works on any building project, maintenance site or other site or under a nominated industrial award/agreement for more than three months (or lesser period determined by the Trustee).

44. Where an employer receives a refund of contributions made for a person who has ceased to be an employee of the employer, the refund is considered to be income received in the ordinary course of business and assessable under section 6-5 of the ITAA 1997 in the income year in which it is derived.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2006/13W; TR 2006/10;
CR 2012/28

Subject references:

- assessable recoupments
- deductions and expenses
- exempt benefits
- fringe benefits tax
- income
- worker entitlement funds

- ITAA 1997 8-1
- ITAA 1997 8-1(1)
- ITAA 1997 8-1(2)
- FBTA 1986 58PA
- FBTA 1986 58PA(b)
- FBTA 1986 58PA(c)
- FBTA 1986 58PB(2)
- FBTA 1986 136(1)
- Copyright Act 1968

Case references:

- Walster Pty Ltd v. Federal Commissioner of Taxation [2003] FCA 1428; 2003 ATC 5076; (2003) 54 ATR 423

Legislative references:

- ITAA 1997 6-5

ATO references

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