


***CR 2017/31 - Income tax: employment termination
payment: Australian Football League Players'
Association Incorporated***

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Class Ruling

Income tax: employment termination payment: Australian Football League Players' Association Incorporated

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📌 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.

Summary – what this Ruling is about

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

Relevant provision

2. The relevant provision dealt with in this Ruling is section 82-130 of the *Income Tax Assessment Act 1997* (ITAA 1997). All subsequent references in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this scheme applies are all Australian Football League (AFL) players leaving their football club who receive a payment under the scheme described below.

Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is in accordance with the scheme described under the heading *Scheme*.

5. 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

6. This Ruling applies from 31 May 2017 for up to three years thereafter. The Ruling continues to apply after the three years 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).

Scheme

7. The following description of the Scheme is based on the information provided by the applicant.

8. The AFL is the controlling body of the national competition between eighteen AFL clubs. The Australian Football League Players' Association Incorporated (AFLPA) is the representative body of the players participating in the AFL competition.

9. In 1999, as part of a program designed to create a source of income for the AFL footballers after their professional playing career ends, the AFLPA established a Player Retirement Account (PRA). This was operated by and within the AFLPA.

10. The AFL and the AFLPA have bargained for certain terms and conditions in relation to the AFL competition and other matters affecting the welfare of the AFL, the clubs, AFLPA and the players.

11. Under the Collective Bargaining Agreement (CBA) between the AFL and the AFLPA, operating from 1 November 2011 to 31 October 2016, a new model for the operation of the PRA was agreed upon.

12. Under this model, players will have annual contributions made by the AFLPA based upon their years of service. The more years of service a player has, the greater the amount contributed on a per annum basis.

13. The PRA account will be administered by the AFLPA. The balance of the account will comprise of the amount contributed and accrue interest on investment earnings.

14. When a player retires and is delisted from their AFL club, the amount accrued in the PRA on the player's behalf will be paid out. This amount will comprise of contributions and investment earnings. The player will be paid out as follows:

- Player with 1-4 years' service – the player will receive accrued balance as a lump sum within 12 months of being delisted as a player.
- Player with 5-7 years' service – the player will receive 30% of their retirement account within 12 months of being delisted and the balance will be retained for a further 5 years accruing investment returns. After that 5 year period, the balance will be remitted to the player in equal periodic instalments over the following 5 years.
- Player with 8-10 years' service – the player will receive 25% of their retirement account within 12 months of being delisted and the balance will be retained for a further 5 years accruing investment returns. After that 5 year period, the balance will be remitted to the player in equal periodic instalments over the following 10 years.
- Player with 11 or more years' service – the player will receive 20% of their retirement account within 12 months of being delisted and the balance will be retained for a further 5 years accruing investment returns. After that 5 year period, the balance will be remitted to the player in equal periodic instalments over the following 15 years.

15. In each year, players are delisted either prior to 31 October or within a subsequent period provided for under the AFL rules. Where a player is delisted after 31 October in a year, by the operation of the player's contract, the player's employment will have terminated on 31 October in that year. A player may be relisted by an AFL club during the ensuing trading period or following selection in the AFL National Draft, with both occurring prior to the commencement of the following season.

16. Where a player has service prior to 31 October 2011, the retirement benefit will be paid to the player within 12 months of the player's retirement.

17. Where a player has service pre and post 31 October 2011, a proportion of the player's retirement benefit will be paid as a lump sum within 12 months of the player's retirement. The proportion of the benefit paid as a lump sum within 12 months of retirement depends upon the years of service that the player has with the AFLPA. The balance of this payment will be paid as periodic instalments.

18. In all cases where a player terminates their employment with an AFL club and retires, the initial lump sum component of the payment will be made within 12 months of the termination.

Ruling

19. A payment made to a football player within 12 months of the termination in accordance with the scheme described in this Ruling will be an employment termination payment under section 82-130.

20. A payment made to a football player more than 12 months after the termination will not be an employment termination payment under section 82-130. The payment will be assessable income under section 83-295.

21. A payment made on the death of a football player to a dependant or the legal personal representative of the deceased, where the deceased player was engaged in employment at the time of their death, will be a death benefit termination payment under subsection 82-130(3).

Commissioner of Taxation

7 June 2017

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.*

Employment termination payments

22. Section 995-1 states that an employment termination payment has the meaning given by section 82-130.

23. In accordance with subsection 82-130(1), 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 persons employment,
- (b) it is received no later than 12 months after that termination (but see subsection (4)), and
- (c) it is not a payment mentioned in section 82-135.

24. In accordance with section 80-10, for the purposes of section 82-130, the termination of employment includes retirement from employment and the cessation of employment because of death.

Payment received 'in consequence of' the termination of employment

25. The phrase 'in consequence of' is not defined in the ITAA 1997. However, the courts have interpreted the phrase in a number of cases. Taking into account the courts' decisions on the meaning of the phrase, the Commissioner's view on the meaning and application of the 'in consequence of' test are set out in 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'* (TR 2003/13).

26. While TR 2003/13 contains references to repealed provisions, some of which may have been rewritten, the ruling still has effect as both the former provision under the *Income Tax Assessment Act 1936* and the current provision under the ITAA 1997 both use the term 'in consequence of' in the same manner.

27. In paragraphs 5 and 6 of TR 2003/13, the Commissioner states:

- 5. ... 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.

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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...

28. Under the Scheme, a payment is made to a player only if the player retires and is delisted from the AFL. That is, retirement is a condition of the entitlement to the payment. As such, the payment follows as a result of the termination and is therefore, paid in consequence of the termination of employment.

Payment received no later than 12 months after the termination

29. To be treated as an employment termination payment, a payment must be received no later than 12 months after the termination.

30. However, in accordance with subsection 82-130(4), the 12 month rule does not apply if a person is covered by a determination made by the Commissioner under either subsection 82-130(5) or (7), or if the payment is a genuine redundancy payment or an early retirement scheme payment.

31. The Commissioner has issued two determinations under subsection 82-130(7), however these determinations do not apply in this case.

32. The Commissioner's determination under subsection 82-130(5) is made on an individual basis. Therefore, for this subsection to apply, an individual player who receives a payment later than 12 months after the termination will need to lodge an application based on their particular circumstances.

33. Consequently, subject to any individual determination made by the Commissioner, a payment made more than 12 months after the termination of employment will not be an employment termination payment. In accordance with section 83-295, these payments are assessable income of a player in the income year they are received.

Payment not mentioned in section 82-135

34. Section 82-135 lists certain payments that are not employment termination payments, none of which apply in this case.

Periodic instalments over years subsequent to the termination of employment

35. The periodic payments made to the players after their playing career is over are also made in consequence of the termination of the same employment. This is because but for the termination of employment the payments would not be made.

36. For the same reasons as explained above, these payments are not employment termination payments because they will be paid more than 12 months after the termination of employment.

37. These payments will also be assessable under section 83-295 in the manner outlined above.

Payment after death

38. Where a player was engaged in employment at the time of their death, the payment received from the AFLPA on the death of the player will be considered to be in consequence of the termination of employment.

39. If the player was not engaged in employment at the time of their death, the payment from the AFLPA will not be in consequence of the termination of employment. Accordingly, a payment received on the death of the player will not be an employment termination payment.

Appendix 2 – Detailed contents list

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

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References

- Previous draft:*
- ITAA 1997 82-130
- Not previously issued as a draft
- ITAA 1997 82-130(1)
 - ITAA 1997 82-130(3)
- Related Rulings/Determinations:*
- ITAA 1997 82-130(4)
 - ITAA 1997 82-130(5)
- TR 2003/13; TR 2006/10
- ITAA 1997 82-130(7)
 - ITAA 1997 82-135
- Legislative references:*
- ITAA 1997 83-295
 - ITAA 1997 995-1
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ATO references

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