


# ***CR 2025/41 - Street v State of Western Australia: Settlement Distribution Scheme***

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Status: **legally binding**

## Class Ruling

# Street v State of Western Australia: Settlement Distribution Scheme

### **❶ Relying on this Ruling**

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for individuals who receive a distribution of an amount based on their Final Settlement Entitlement (Distribution) under the Street v State of Western Australia Settlement Distribution Scheme (Settlement Distribution Scheme).
2. Relevant details of this scheme are set out in paragraphs 11 to 21 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.
4. Terms capitalised in this Ruling take their meaning from the Deed of Settlement approved by the Federal Court by Federal Court Order subsequent to *Street v State of Western Australia* [2024] FCA 1368.

### **Who this Ruling applies to**

5. This Ruling applies to you if you:
  - are either an Original Eligible Claimant or a Descendant Eligible Claimant under the Settlement Distribution Scheme, and
  - receive a Distribution under the Settlement Distribution Scheme.

### **When this Ruling applies**

6. This Ruling applies from 1 July 2024 to 30 June 2027.

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Status: **legally binding**

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## **Ruling**

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7. A Distribution to an Original Eligible Claimant or a Descendant Eligible Claimant under the Settlement Distribution Scheme is not assessable as ordinary income under section 6-5.

8. A Distribution to an Original Eligible Claimant or a Descendant Eligible Claimant under the Settlement Distribution Scheme is an amount received for the ending of rights to seek compensation and is subject to the capital gains tax (CGT) provisions in Part 3-1.

9. CGT event C2 under section 104-25 happens when any right an Original Eligible Claimant or a Descendant Eligible Claimant had to seek compensation ends.

10. However, any capital gain or capital loss an Original Eligible Claimant or a Descendant Eligible Claimant makes as a result of receiving a Distribution under the Settlement Distribution Scheme is disregarded under subsection 118-37(1).

## **Scheme**

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11. The following description of the scheme is based on information provided by the administrator of the Settlement Distribution Scheme. If the scheme is not carried out as described, this Ruling cannot be relied upon.

12. The Settlement Distribution Scheme was established on 12 December 2024 pursuant to a court order in respect of the settlement of *Street v State of Western Australia* [2024] FCA 1368 class action proceedings (Class Action Proceedings).

13. The Class Action Proceedings were commenced by Mr Mervyn Street in his own right and on behalf of Aboriginal and Torres Strait Islander Group Members (Group Members) under Part IVA of the *Federal Court of Australia Act 1976*.

14. The Class Action Proceedings made a number of assertions in relation to (among other things):

- the working conditions, including payment or non-payment of wages, and the control of money and other property while Mr Mervyn Street (and other Group Members) worked under the operation of the former Native Acts<sup>1</sup> in force in Western Australia during the period 11 December 1936 to 9 June 1972 (Claim Period), and
- contraventions of the *Racial Discrimination Act 1975* by Western Australia in the conduct of a reparations scheme established and operated by Western Australia in 2012.

15. The Class Action Proceedings were settled in October 2023, whereby Western Australia agreed to pay an amount not exceeding \$165 million (Settlement Fund Amount), plus an Agreed Costs Component, without admission of liability.

16. The Administrators have estimated that there may be up to 10,000 claims to receive a Distribution from the Settlement Fund Amount under the Settlement Distribution Scheme.

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<sup>1</sup> *Native Administration Act 1905* (WA), the *Native Welfare Act 1905* (WA) or the *Native Welfare Act 1963* (WA).

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Status: **legally binding**

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17. To be an Original Eligible Claimant under the Settlement Distribution Scheme, the individual must be an Aboriginal or Torres Strait Islander person who:

- lived in Western Australia during all or part of the Claim Period
- was at least 10 years old in the Claim Period (that is, born before 9 June 1962)
- was a native as defined by the former Native Acts during all or part of the Claim Period, and
- during all or part of the Claim Period worked in Western Australia at a time when they were a 'controlled native' or had their property controlled by a former Native Act, and was paid no or nominal wages for that work.

18. A Descendant Eligible Claimant under the Settlement Distribution Scheme is the most recent living spouse (including a de facto spouse) or a living child of a deceased Original Eligible Claimant.<sup>2</sup>

19. As at the date of this Ruling, a portion of the Settlement Fund Amount has been paid by Western Australia to the Administrator of the Settlement Distribution Scheme.

20. The Administrator of the Settlement Distribution Scheme holds the Settlement Fund Amount on trust for the Original Eligible Claimants and Descendant Eligible Claimants until their Final Settlement Entitlements are determined and Distributions are made.

21. Additional information about the Settlement Distribution Scheme is set out in the following documents:

- Deed of Settlement between Mervyn Street and Western Australia dated 17 October 2023, and
- Federal Court Order and Settlement Distribution Scheme dated 12 December 2024.

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**Commissioner of Taxation**

18 June 2025

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<sup>2</sup> This Ruling is made on the basis that a Descendant Eligible Claimant that is registered with the Settlement Distribution Scheme falls within the definition of 'relative' in subsection 995-1(1).

Status: **not legally binding**

## Appendix – Explanation

**❶** *This Explanation 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.*

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### When a Distribution from the Settlement Fund Amount will be assessable income

22. A Distribution made to an Original Eligible Claimant, or a Descendant Eligible Claimant from the Settlement Fund Amount will be included in their assessable income if it is:

- income in the ordinary sense of the word (ordinary income), or
- not ordinary income but through the operation of the income tax assessment Acts it is included in assessable income (statutory income).

### Ordinary income

23. Subsection 6-5(1) provides that the assessable income of a taxpayer includes income according to ordinary concepts.

24. The income tax assessment Acts do not explain the meaning of 'income according to ordinary concepts', however, a substantial body of case law exists which identifies likely characteristics.

25. In *GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth)* [1990] HCA 25, the High Court stated:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes, the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

26. Amounts that are periodical, regular or recurrent, relied upon by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income, as are amounts that are the product in a real sense of any employment of, or services rendered by the recipient. Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.

27. No single factor is determinative of the receipt's character, but some factors may be more relevant than others in light of the circumstances of the case (see, for example, *Commissioner of Taxation (Cth) v Montgomery* [1999] HCA 34).

28. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient. The whole of the circumstances must be considered and the motive of the payer may be relevant to this consideration.

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Status: **not legally binding**

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29. While an Original Eligible Claimant, or a Descendant Eligible Claimant's relative, must have been employed, or required to work, for them to be eligible to register in the Settlement Distribution Scheme, the Distribution they receive from the Settlement Fund Amount is not the product of employment or services rendered by the Original Eligible Claimant, nor is it considered to represent the payment of wages foregone or lost. Furthermore, a Distribution from the Settlement Fund Amount is not relied upon by the Original Eligible Claimants or Descendant Eligible Claimants (as applicable) for their regular expenditure or paid for that purpose.

30. Distributions made from the Settlement Fund Amount under the Settlement Distribution Scheme are one-off lump sum payments in the nature of compensation. Accordingly, a Distribution from the Settlement Fund Amount does not possess the characteristics of ordinary income and is therefore not assessable under section 6-5.

### **Statutory income**

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

32. Statutory income relevantly includes net capital gains 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 CGT event happens to a CGT asset.

34. Rights to seek compensation are CGT assets under section 108-5.

35. CGT event C2 under section 104-25 happens at the time a right to seek compensation comes to an end.

36. However, any capital gain or capital loss made from a CGT event is disregarded pursuant to subparagraph 118-37(1)(a)(ii) where the CGT event relates directly to compensation or damages received for any wrong, injury or illness an individual or their relative suffers personally.

37. Any capital gain (or capital loss) arising from CGT event C2 happening on the ending of an Original Eligible Claimant's or Descendant Eligible Claimant's rights to seek compensation is disregarded under subparagraph 118-37(1)(a)(ii) as it relates directly to compensation for personal wrong, injury or illness.

38. Accordingly, a Distribution made by the Administrator of the Settlement Distribution Scheme to an Original Eligible Claimant or Descendant Eligible Claimant from the Settlement Fund Amount is not assessable under section 6-10 as statutory income.

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Status: **not legally binding**


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## References

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### *Legislative references:*

- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 Pt 3-1
- ITAA 1997 102-5
- ITAA 1997 104-25
- ITAA 1997 108-5
- ITAA 1997 118-37(1)
- ITAA 1997 118-37(1)(a)(ii)
- ITAA 1997 995-1(1)
- Federal Court of Australia Act 1976 Pt IVA
- Native Administration Act 1905 (WA) (repealed)
- Native Welfare Act 1905 (WA) (repealed)

- Native Welfare Act 1963 (WA) (repealed)
- Racial Discrimination Act 1975

### *Cases relied on:*

- Commissioner of Taxation (Cth) v Montgomery [1999] HCA 34; 198 CLR 639; 99 ATC 4749; 42 ATR 4757; 3 ALJR 1160
  - GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth) [1990] HCA 25; 170 CLR 124; 64 ALJR 392; 90 ATC 4413; 21 ATR 1
  - Street v State of Western Australia [2024] FCA 1368
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### ATO references

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