

CR 2001/24 - Income tax: Singapore Airlines Limited - bone fide redundancy payments

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 This document has changed over time. This is a consolidated version of the ruling which was published on *27 June 2001*



Class Ruling

Income tax: Singapore Airlines Limited – bone fide redundancy payments

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a ‘public ruling’ in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax law(s)’ identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law

2. The tax law dealt with in this Ruling is section 27F of the *Income Tax Assessment Act 1936* (the Act).

Class of persons

3. The class of persons to whom this Ruling applies are:

- employees of Singapore Airlines Limited who perform a variety of cargo operational and administrative functions who do not take up employment with a new subsidiary company

and receive a payment under the arrangement described below at paragraphs 10 to 17.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs

10 to 17 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled, and
- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 27 June 2001. The Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn and ceases to have effect after 3 July 2001. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the specified arrangement during the term of the ruling. Thus, the Ruling continues to apply to those persons, even following its withdrawal, for arrangements entered into prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the persons' involvement in the arrangement.

Arrangement

10. Singapore Airlines Limited (hereafter referred to as 'the employer') is seeking confirmation as to whether particular payments

made to a class of employees on the termination of employment are bona fide redundancy payments under section 27F of the Act.

11. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- correspondence dated 15 February 2001 from Singapore Airlines Limited.
- record of telephone conversation with a representative of Singapore Airlines Limited dated 22 May 2001.
- record of telephone conversation with a representative of Singapore Airlines Limited dated 14 June 2001.

Note: certain information received from Singapore Airlines Limited has been provided on a commercial-in-confidence basis and will not be disclosed or released under the Freedom of Information Legislation.

12. As at 15 February 2001 the employer had 25 employees who perform a variety of cargo operational and administrative functions. These employees have been advised that as of 1 July 2001 a new subsidiary company will take over all the functions of the cargo operations and administration.

13. Employees working in the cargo sections of the employer have been offered to transfer employment to the newly formed, wholly owned subsidiary company. The new roles of the employees will be similar to those they are performing now. Terms and conditions applicable to the job functions in Singapore Airlines Limited will be retained for employees agreeing to transfer to the new company.

14. Since the employer will no longer perform any cargo functions, employees who opt not to join the subsidiary company, will be surplus to the employer's needs. In such a case the employer will pay these employees the involuntary (compulsory) redundancy payment as provided in the "*Singapore Airlines Certified Enterprise Bargaining Agreement*" signed 4 March 1999.

15. The involuntary (compulsory) redundancy payment consists of:

- three weeks pay for each year of service up to and including five years service;
- four weeks pay for each completed year of service in excess of five years;

- the maximum redundancy payment is capped at eighty five weeks.
16. Furthermore, in respect to any such payment made to a person:
- the payment is not made from an eligible superannuation fund;
 - the payment is not made in lieu of superannuation benefits;
 - the termination of employment is before the earlier of:
 - (a) age 65; or
 - (b) the date on which his or her employment would have necessarily terminated under the terms of employment because of the employee attaining a certain age or completing a certain period of service;
 - the employee and the employer are dealing with each other 'at arm's length';
 - at the termination time, there is no agreement in force between the employee and the employer or the employer and another person, to re-employ the employee after the date of termination.
17. The bona fide redundancy payment is so much of the eligible termination payment as exceeds the amount of an eligible termination payment that could reasonably be expected to have been made in relation to the employee had he or she voluntarily retired from that employment.

Ruling

18. The payment made by Singapore Airlines Limited on the termination of employment of the class of persons to whom this Ruling applies will qualify as a bona fide redundancy payment under section 27F of the *Income Tax Assessment Act 1936*.

19. Accordingly, so much of the eligible termination payment as exceeds the amount of an eligible termination payment that could reasonably be expected to have been made in relation to the employee had he or she voluntarily retired from that employment, is a bona fide redundancy payment in relation to the employee.

Explanations

20. A payment on the termination of employment will be a bona fide redundancy payment if it satisfies all the requirements of section 27F of the *Income Tax Assessment Act 1936* (the Act).

21. The first requirement under paragraph 27F(1)(a) of the Act is that the payment must be an eligible termination payment made in relation to the taxpayer in consequence of the dismissal from his or her employment by reason of bona fide redundancy. The Commissioner of Taxation (the Commissioner) has issued Taxation Ruling TR 94/12 titled: *'Income tax: approved early retirement scheme and bona fide redundancy payments'* which sets out guidelines on the application of section 27F.

22. Paragraphs 41 and 42 of TR 94/12 state that:

“41. Redundancy can be described as the situation where an employer no longer requires employees to carry out work of a particular kind or to carry out work of a particular kind at the same location. Bray CJ in *R v. The Industrial Commission of South Australia; ex parte Adelaide Milk Supply Co-operative Ltd & Ors* (1977) 44 SAIR 1202 at page 1205; (1977) 16 SASR 6 at page 8 defined redundancy as follows:

“... a job becomes redundant when an employer no longer desires to have it performed by anyone. A dismissal for redundancy seems to be a dismissal, not on account of any act or default of the employee dismissed or any consideration peculiar to him, but because the employer no longer wishes the job the employee has been doing to be done by anyone.”

42. Redundancy refers to a job becoming redundant and not to an employee becoming redundant (*Short v F W Hercus Pty Ltd* (1993) 40 FCR 511; (1993) 46 IR 128; (1993) 35 AILR 151). An employee's job is considered to be redundant if:

- an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by any one;
- that decision is not due to the ordinary and customary turnover of labour;
- that decision led to the termination of the employee's employment; and
- that termination of employment is not on account of any personal act or default of the employee.”

23. All cargo operational and administration functions of Singapore Airlines Limited will be taken over by a new subsidiary company, on 1 July 2001. Since Singapore Airlines Limited will no longer perform any cargo functions it is considered that the employer no longer wishes to have cargo operational and administrative functions performed by anyone within Singapore Airlines Limited. The employer's decision is not due to the ordinary and customary turnover of labour, rather it results from the cessation of the cargo functions as a result of restructuring. The decision taken by the employer led to the termination of the employee's employment and that termination of employment is not on account of any personal act or default of the employee. Therefore the jobs in cargo operational and administrative functions are considered to be redundant.
24. The second requirement under paragraph 27F(1)(aa) of the Act is that the payment must not be made from an eligible superannuation fund. In this case, the payment is being made by the employer, not a superannuation fund, therefore this condition is satisfied.
25. Paragraph 27F(1)(b) of the Act requires that the termination time was a date before the taxpayer attained age 65 or such earlier date on which his or her employment would have necessarily terminated under the terms of employment because of the employee attaining a certain age or completing a certain period of service. None of the class of persons covered by this Ruling will be aged 65 at the time of termination of employment and Singapore Airlines does not have an earlier date of termination of employment.
26. Under paragraph 27F(1)(c) if the employer and the employees were not dealing with each other at arm's length in relation to the termination of employment, the amount of the eligible termination payment must not be greater than the amount that could reasonably be expected to have been paid if the parties had been at arm's length. In this case the employer and the employees are dealing with each other at arm's length, therefore this condition is satisfied.
27. The fifth requirement under paragraph 27F(1)(d) of the Act is that, at the termination time, there is no agreement in force between the employees and the employer or the employer and another person, to re-employ the employees after the date of termination.
28. The term 'agreement' is defined in subsection 27A(1) of the Act as meaning any agreement, arrangement or understanding whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings.
29. The class of employees covered by this Ruling is employees of the employer who perform a variety of cargo operational and administrative functions who do not take up employment with the subsidiary company. In these circumstances, there is no agreement

between the employees and the employer or the employer and another person to re-employ the employees after the date of termination.

30. Subsection 27F(2) of the Act provides that no part of the payment which represents a payment in lieu of superannuation benefits will be included as part of a bona fide redundancy payment. The employer has advised that no such amounts will be included in the payment, therefore this condition is satisfied.

31. Since all of the requirements set out in section 27F of the Act are satisfied, so much of the eligible termination payment as exceeds the amount of an eligible termination payment that could reasonably be expected to have been made in relation to the employee had he or she voluntarily retired from that employment will be a bona fide redundancy payment.

Other relevant information:

32. A bona fide redundancy payment made on or after 1 July 1994 that falls within the specified limits will be exempt from income tax, and called the “tax-free amount.”

33. For the year ending 30 June 2001, the tax-free amount is limited to \$5062 plus \$2531 for each whole year of completed employment service to which the approved early retirement scheme payment relates. Please note that 6 months, 8 months or even 11 months do not count as a whole year for the purposes of this calculation. The \$5 062 and \$2 531 limits will be indexed to rise in each subsequent year in line with increases in average weekly ordinary time earnings.

34. Furthermore, the tax-free amount will:

- not be an eligible termination payment (ETP);
- not be able to be rolled-over;
- not include any amount from a superannuation fund or paid in lieu of a superannuation benefit; and
- not count towards the recipient’s Reasonable Benefit Limit.

35. Any payment in excess of this limit will be an ordinary ETP and split up into the pre-July 83 and post-June 83 (untaxed element) components. This ETP can be rolled-over.

36. It should be noted that the amount of a bona fide redundancy payment that is over the tax-free amount may be taxed under the provisions of the superannuation surcharge legislation, whether it is taken in cash or rolled-over.

37. The following amounts qualify as a bona fide redundancy payment and are exempt from tax within the limits described above:

- three weeks pay for each year of service up to and including five years service;
- four weeks pay for each completed year of service in excess of five years;
- the maximum redundancy payment is capped at eighty five weeks.

38. A copy of this Ruling must be given to all employees within the class of persons to whom this Ruling applies.

Detailed contents list

39. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

27 June 2001

Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TR 94/12; TR 94/12E

Subject references:

- bona fide redundancy payments
- eligible termination payments
- eligible termination payments components

Legislative references:

- ITAA 1936 27A(1)
- ITAA 1936 27F
- ITAA 1936 27F(1)(a)
- ITAA 1936 27F(1)(aa)
- ITAA 1936 27F(1)(b)
- ITAA 1936 27F(1)(c)
- ITAA 1936 27F(1)(d)
- ITAA 1936 27F(2)

Case references:

- R v. The Industrial Commission of South Australia; ex parte Adelaide Milk Supply Co-operative Limited & Ors (1977) 44 SAIR
- Short v FW Hercus Pty Limited (1993) 40 FCR 511; (1993) 46 IR 128; (1993) 35 AILR 151

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