


CR 2006/11 - Income tax: Leave - Deferred Salary Scheme - employees of Lutheran Schools and Kindergartens in Western Australia

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Class Ruling

Income tax: Leave – Deferred Salary Scheme – employees of Lutheran Schools and Kindergartens in Western Australia

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1 This Ruling provides you with the following level of protection:

This publication (excluding appendices) 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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any under-paid 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

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

Relevant taxation provision(s)

2. The tax provision dealt with in this Ruling is section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of entities

3. The class of entities to which this Ruling applies is employees of Lutheran Schools and Kindergartens (Lutheran Schools) in Western Australia who participate in the Leave – Deferred Salary Scheme (the scheme) under the Lutheran Schools WA Enterprise Agreement 2005 (the Enterprise Agreement). In this Ruling, these employees are referred to as Participants.

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 19.
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

8. This Ruling applies from 1 January 2005. However, 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). Furthermore, the Ruling only applies to the extent that:
 - it is not later withdrawn by a notice in the *Gazette*; or
 - the relevant taxation provisions are not amended.

Scheme

9. The scheme 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 the documents incorporated into the description of the schemes are:
 - Application for Class Ruling dated 2 May 2005;

- Lutheran Schools WA Enterprise Agreement 2005; and
- Information provided in a telephone conversation by an employee of the tax agent for the applicant on 2 August 2005.

10. The Lutheran Schools Association of SA, NT and WA Inc. (Lutheran Schools Inc) is the governing body of various Lutheran Schools throughout Australia. The Enterprise Agreement enables employees of Lutheran Schools in Western Australia to participate in the Scheme to defer an entitlement to salary in return for the right to receive salary while taking sabbatical leave.

11. Employees of Lutheran Schools who wish to participate in the Scheme require:

- a minimum of two years continuous service; and
- approval of the employer school which depends upon the needs and requirements of the school.

12. The sabbatical leave is funded by the Participant deferring the payment of salary. The deferred salary is:

- 20% of normal annual salary where the sabbatical leave is taken in the fifth year; or
- 10% of normal annual salary where sabbatical leave is taken in the tenth year.

Normal salary is defined as a Participant's normal fortnightly salary plus any associated teaching allowances.

13. The Participant receives a reduced salary whilst participating in the Scheme, being the normal salary less the deferred salary.

14. The Participant's deferred salary will be remitted by the Lutheran School to the Lutheran Schools Inc. for management. This amount will be recognised as a future liability to pay the Participant. No amount is held in the name of, and no interest accrues to, the Participant.

15. The deferred salary will be paid to the Participant when sabbatical leave is taken. This amount will be paid:

- fortnightly during the sabbatical leave;
- by two instalments during the period of sabbatical leave; or
- by one lump sum at the commencement of the sabbatical leave.

If the Participant withdraws from the Scheme prior to the sabbatical leave, the amount of deferred salary will be paid to the Participant.

16. Once the Lutheran School has approved an employee's application to participate in the Scheme, the approval cannot be withdrawn.

17. The Participant continues to work the normal agreed hours as specified in the Enterprise Agreement.

18. The period of leave will be for twelve months, from 1 January to 31 December.

19. Scheme rules enable a Participant to:

- withdraw from the Scheme;
- be suspended from the Scheme during any period of unpaid leave or for a period up to twelve months;
- transfer employment between Lutheran Schools;
- have the Participant's entitlement paid to a personal representative in the event of death; and
- defer the taking of sabbatical leave by agreement.

Ruling

20. The deferred salary paid to Participants while taking sabbatical leave under the Scheme is included in their assessable income in the income year that it is received under section 6-5 of the ITAA 1997.

Commissioner of Taxation

8 March 2006

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.*

21. Employees of Lutheran Schools in Western Australia who participate in the Scheme have varied their employment contracts. In return for accepting a reduced salary for future employment services they will provide to the employer, they will have an entitlement to receive a deferred salary while on sabbatical leave.

22. Subsection 6-5(1) of the ITAA 1997 provides that the assessable income of a taxpayer includes income according to ordinary concepts, which is called ordinary income. Subsection 6-5(2) of the ITAA 1997 provides that the assessable income of Australian residents includes ordinary income derived directly or indirectly from all sources.

23. Income from employment is generally derived only when received.

24. The reduced salary of a Participant is included in assessable income in the income year of receipt under subsection 6-5(1) of the ITAA 1997.

25. The deferred salary of a Participant is included in assessable income in the income year of receipt being:

- during the period of sabbatical leave; or
- on withdrawal from the Scheme.

26. The deferred salary is not considered to be an amount that has been applied or dealt with in any way on behalf of, or at the direction of the Participant. While the Lutheran School recognises that it has a future obligation to make the payment, the Participant does not have the right to draw on the amount until one of the events in paragraph 15 occurs. It is considered that subsection 6-5(4) of the ITAA 1997 does not apply.

27. If the Participant dies before receiving all or some of the deferred salary, the amount so paid thereafter is the assessable income of the legal representative of the deceased's estate and is brought to account under section 101A of the *Income Tax Assessment Act 1936*. The deferred salary is not in respect of annual leave or long service leave.

Pay as you go (PAYG) withholding

28. At the time of paying the deferred salary to the Participant during the period of sabbatical leave, the Lutheran School is required to withhold amounts from these payments under its PAYG withholding obligations under Division 12 of Schedule 1 of the *Taxation Administration Act 1953*.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/20

Subject references:

- assessable income
- employment contract
- deferred income
- deferred salary payment
- income derived

Legislative references:

- ITAA 1936 101A
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-5(2)
- ITAA 1997 6-5(4)
- TAA 1953
- TAA 1953 Sch 1 Div 12
- Copyright Act 1968

ATO references

NO: 2006/3365

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ employment
income - Australian sourced
Income Tax ~~ Assessable income ~~ other payments