



CR 2006/121 - Fringe benefits tax: contributions to an approved worker entitlement fund: Australian Construction Industry Redundancy Trust

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 April 2004*



Class Ruling

Fringe benefits tax: contributions to an approved worker entitlement fund: Australian Construction Industry Redundancy Trust

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❶ 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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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.

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 relevant provisions dealt with in this Ruling are:

- section 58PA of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA);
- section 58PB of the FBTAA; and
- subsection 136(1) of the FBTAA.

All references in this Ruling are to the FBTAA unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies is all employers who make contributions to the Australian Construction Industry Redundancy Trust (ACIRT) for workers who are members (members) of ACIRT.

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 13 to 18 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.

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Date of effect

8. This Ruling applies from 1 April 2004. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

12. This Ruling is withdrawn and ceases to have effect after 31 March 2008. However, the Ruling continues to apply after its withdrawal in respect of the relevant provisions ruled upon, to all entities within the specified class who entered into the specific scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities' involvement in the scheme.

Scheme

13. The scheme that is the subject of this 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 and are part of and are to be read with the description. The relevant documents or part of documents incorporated into this description of the scheme are:

- Class ruling application from Phillips Fox dated 3 March 2006;
- a copy of the ACIRT Redundancy Fund Trust Deed (ACIRT Trust Deed);
- an example Deed of Adherence between ACIRT and an Employer;
- a copy of clause 16 of the *National Building and Construction Industry Award 2000* (NBCIA); and
- a copy of clause 16 of the *NSW Building and Construction Industry (State) Award* (NSW BCIA).

14. ACIRT is an Australian resident trust fund governed by a trust deed, which established the fund in Australia. The central management and control of the fund is in Australia.

15. The trustee of ACIRT is ACIRT Pty Ltd ACN 062 330 170 (the ACIRT Trustee), an Australian resident company.

16. ACIRT is an approved worker entitlement fund for fringe benefits tax purposes.

17. Employers provide redundancy entitlements for their workers pursuant to various awards and agreements (industrial instruments). Employers can fund the worker redundancy entitlements they are required to make by the payment of contributions to ACIRT.

18. ACIRT accepts contributions from employers to fund each worker's individual redundancy benefit. ACIRT and the employers execute an agreement called a 'Deed of Adherence' which sets out the amount to be contributed by the employer in respect of each worker. This can be calculated by reference to:

- the 'minimum contribution' rate (as defined in the ACIRT Trust Deed);
- a rate higher than the 'minimum contribution' rate as may be agreed upon between the ACIRT Trustee and the employer; or
- the rate provided for in an Award, an Enterprise Agreement or an Industrial Agreement.

Ruling

19. Contributions that are made to ACIRT by an employer in respect of the employment of their employees are exempt benefits under section 58PA.

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.*

Application of section 58PA

20. When an employer makes a contribution to an approved worker entitlement fund that contribution is an exempt benefit if it meets the requirements of section 58PA.

21. Section 58PA 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.

Contribution to an approved worker entitlement fund

22. Paragraph 58PA(a) requires the contribution be made to an approved worker entitlement fund. Whether the employer makes the redundancy payments to an approved worker entitlement fund is a question of fact.

23. Section 58PB deals with the meaning of approved worker entitlement fund. Subsection 58PB(2) states:

A fund is an **approved worker entitlement fund** if:

- (a) the fund is prescribed for the purposes of this paragraph; and
- (b) a declaration under subsection (3) is not in force in relation to the fund.

24. ACIRT has been prescribed as an approved worker entitlement fund for the purposes of paragraph 58PB(2)(a). There is no declaration under subsection 58PB(3) in force in relation to this fund.

25. Therefore, any contributions made by an employer to ACIRT will be to an approved worker entitlement fund for the purposes of paragraph 58PA(a).

Contribution made under an industrial instrument

26. Paragraph 58PA(b) requires that the contributions be made under an 'industrial instrument'.

27. An 'industrial instrument' is defined in subsection 136(1) as 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'.

28. The NBCIA and also the NSW BCIA are industrial instruments for the purposes of paragraph 58PA(b).

29. As provided for at clause 8.12 of the Explanatory Memorandum to the Tax Laws Amendment (2005 Measures No. 2) Bill 2005, related legal instruments may also be used to determine quantum as well as other relevant matters regarding contributions in terms of the industrial instrument

30. The 'Deed of Adherence' is an example of a related legal instrument that can be used for such purposes.

31. Therefore any contributions made by employers to ACIRT for redundancy payments arising through the application of the relevant industrial instrument together with the 'Deed of Adherence' will satisfy the requirements of paragraph 58PA(b).

Contribution made to ensure that leave payment obligation is met

32. Paragraph 58PA(c) requires that the contribution is either for ensuring that an obligation under the industrial instrument for leave or redundancy is met, or for the reasonable administrative expenses of the fund.

33. As the contributions to be made to ACIRT are made under the relevant awards above to provide for the payment of redundancy benefits to an employee payable on termination, the requirement of paragraph 58PA(c) will be satisfied.

Conclusion on exemption under section 58PA

34. Contributions made by employers to ACIRT to meet the employer's obligations for redundancy payments arising under either the NBCIA or the NSW BCIA will be exempt under section 58PA as all the necessary requirements are met.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Subject references:

- exempt benefits
- fringe benefits tax
- worker entitlement funds

Legislative references:

- FBTAA 1986 58PA
- FBTAA 1986 58PA(a)

- FBTAA 1986 58PA(b)
- FBTAA 1986 58PA(c)
- FBTAA 1986 58PB
- FBTAA 1986 58PB(2)
- FBTAA 1986 58PB(2)(a)
- FBTAA 1986 58PB(3)
- FBTAA 1986 136(1)
- Copyright Act 1968
- TAA 1953
- TAA 1953 Sch 1 357-75(1)

ATO references

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