



CR 2006/96 - Income tax: Construction Industry (Long Service) Act 1997 - Construction Industry (Long Service) Fund - Self-Employed Worker - Interest on Account

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2005*



Class Ruling

Income tax: Construction Industry (Long Service) Act 1997 – Construction Industry (Long Service) Fund – Self-Employed Worker – Interest on Account

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1 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 (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 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:
- subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936);
 - subsection 6-5(1) of the *Income Tax Assessment Act 1997* (ITAA 1997); and
 - subsection 6-5(2) of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies are Self-Employed Workers who:

- are residents of Australia (as defined within subsection 6(1) of the ITAA 1936);

- are named in a Register of Self-Employed Workers kept in accordance with Rule 9A of the trust deed between The Honourable Raymond John Groom, being and as the Minister for Workplace Standards (as settlor) and TasBuild Limited (as trustee) establishing the Fund dated 19 June 1998 (Trust Deed);
- have an account with TasBuild Limited (as trustee) in accordance with Rule 18A of the Trust Deed; and
- make voluntary contributions to TasBuild Limited (as trustee) in accordance with Rule 18B of the Trust Deed.

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 20 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 July 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. 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 Class Ruling is withdrawn and ceases to have effect after 30 June 2010. However, the Ruling continues to apply after its withdrawal in respect of the tax 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 part of and are to be read with the description. The relevant documents or parts incorporated into this description of the scheme are:

- Class Ruling application from Phillips Fox dated 29 August 2005;
- *Construction Industry (Long Service) Act 1997*; and
- Construction Industry (Long Service) Fund Trust Deed (consolidated as at 29 August 2005).

14. The Construction Industry (Long Service) Fund (Fund) was established by Trust Deed dated 19 June 1998. The Trust Deed was made pursuant to the *Construction Industry (Long Service) Act 1997* (Long Service Act), to enable the carrying out of statutory functions under the Long Service Act.

15. The trustee of the Fund is TasBuild Limited (TasBuild) and its statutory authority includes administering contributions made to the Fund by employers. The term 'employer' is defined in the Long Service Act as 'includes a person who is self-employed'.

16. A person who is self-employed (a 'Self-Employed Worker') is a person who was formerly an employee in the construction industry on whose behalf contributions had been made to the Fund and is currently self-employed in the construction industry.

17. A Self-Employed Worker may make voluntary contributions to the Fund. A separate account is maintained for each Self-Employed Worker who makes contributions to the Fund. The account shows the voluntary contributions made by the Self-Employed Worker and any income credited to the account.

18. Whilst interest may be credited to their account, the Self-Employed Worker is not entitled to demand payment of those amounts of interest until certain pre-conditions have been satisfied.

19. A Self-Employed Worker is entitled to the amount of contributions and interest in their account upon the making of a demand for payment not earlier than the first to occur of:

- (a) completion of 10 years of carrying out Construction Work, and on completion of each 5 years of carrying out Construction Work thereafter;
- (b) attaining the Age for Retirement;
- (c) completion of at least 7 years of carrying out Construction Work and the Self-Employed Worker has ceased Construction Work for at least 2 months due to being unable to obtain Construction Work; and
- (d) death of the Self-Employed Worker.

20. Prior to satisfying the pre-conditions to demand payment of contributions and interest, the Self-Employed Worker is only entitled to request a refund of their contributions.

Ruling

21. Interest earned on voluntary contributions made by Self-Employed Workers to the Fund will be assessable income under section 6-5(2) of the ITAA 1997 at the time the interest is derived. The interest is derived when it is received by the Self-Employed Worker.

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.*

22. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included in your assessable income if it is income according to ordinary concepts. This income is called *ordinary income*. Interest is ordinary income and is therefore included in assessable income.

23. Under Subsection 6-5(2) of the ITAA 1997, an Australian resident includes in their assessable income the ordinary income that is derived from all sources during the income year.

24. Interest earned on voluntary contributions made by a Self-Employed Worker will be included in the assessable income of the Self-Employed Worker in the year in which the interest is derived.

25. The issue of derivation of income was considered in *Commissioner of Taxes (South Australia) v. Executor Trustee and Agency Company of South Australia Limited* (1938) 63 CLR 108 (*Carden's case*). In that case, Dixon J at 155 stated:

... in the assessment of income the object is to discover what gains have during the period of account come home to the taxpayer in a realized or immediately realizable form.

26. Taxation Ruling TR 98/1 (TR 98/1) provides a guide for determining when an amount of income has been derived. TR 98/1 at paragraph 47 states:

The general principle is that interest is only derived, or arises, when it is received or credited.

27. The general principle of 'crediting' does not apply when considering the crediting of interest to a Self-Employed Worker's account. Whilst the account for a Self-Employed Worker is credited with interest each year, no entitlement to that interest occurs until the specified pre-conditions are met and a demand is made for payment. The interest has not come home in a realised or in an immediately realisable form at the time of crediting to the Self-Employed Worker's account. The interest is not derived at the time that it is credited.

28. When the specified pre-conditions have been met and the demand for payment has been made, TasBuild is required to make the payment of interest to the Self-Employed Worker. The amount is demanded by the Self-Employed Worker and subsequently received. The Self-Employed Worker is not able to direct TasBuild to deal with or apply the payment in any way. Based on these circumstances, the interest is derived and is included in the assessable income of the Self-Employed Worker in the year in which the payment of interest is received by the Self-Employed Worker.

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 98/1

Subject References:

- assessable income
- income derived
- interest income
- investment income

Legislative References:

- ITAA 1936 6(1)

- ITAA 1997 6-5(1)

- ITAA 1997 6-5(2)

- TAA 1953

- TAA 1953 Sch 1 357-75(1)

- Copyright Act 1968

- Construction Industry
(Long Service) Act 1997

Case References:

- Commissioner of Taxes v.
Executor Trustee and Agency
Company of South Australia
Limited (1938) 63 CLR 108

ATO references

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income