


CR 2007/26 - Income tax: Leave - Deferred Salary Scheme - employees of Lutheran Schools and Kindergartens in the Northern Territory

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Class Ruling

Income tax: Leave – Deferred Salary Scheme – employees of Lutheran Schools and Kindergartens in the Northern Territory

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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 (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 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 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 provision dealt with in this Ruling is:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997).

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is employees of Lutheran Schools and Kindergartens (Lutheran Schools) in the Northern Territory who participate in the Leave – Deferred Salary Scheme (the scheme) under the Lutheran Schools NT Enterprise Agreement 2006 (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 13 to 23 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 2006.

9. 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 taxation provisions are not amended.

10. 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)).

11. 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.

12. 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).

Scheme

13. The following description of the scheme is based on information provided by the applicant.

14. 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 the Northern Territory to participate in the Scheme to defer an entitlement to salary in return for the right to receive salary while taking sabbatical leave.

15. 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.

16. 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.

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

18. 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.

19. 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.

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 Once the Lutheran School has approved an employee's application to participate in the Scheme, the approval cannot be withdrawn.

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

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

23. 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

24. 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.

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.*

25. Employees of Lutheran Schools in the Northern Territory 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.

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

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

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

29. 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.

30. 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 19 of this Ruling occurs. It is considered that subsection 6-5(4) does not apply.

31. 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 withholding (PAYG)

32. 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 TAA.

Appendix 2 – Detailed contents list

33. 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:

- assessable income
- deferred income
- deferred salary payment
- employment contract
- 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
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

ATO references

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