

CR 2025/3 - Australian Cricketers' Association - employment termination payment

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Class Ruling

Australian Cricketers' Association – employment termination payment

📌 Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

[Note: This is a consolidated version of this document. Refer to the Legal database (ato.gov.au/law) to check its currency and to view the details of all changes.]

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What this Ruling is about

1. This Ruling sets out the income tax consequences of payments received by Players of Australian Cricket Players Limited, trading as the Australian Cricketers' Association (ACA), from their Australian Cricketers' Retirement Account (ACRA).
2. Details of this scheme are set out in paragraphs 11 to 27 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.
4. Capitalised terms in this Ruling take their meaning from either the Modernised Australian Cricketers' Retirement Account Rules (Modernised ACRA Rules) or the Constitution of Australian Cricket Players Limited.

Who this Ruling applies to

5. This Ruling applies to Players of the ACA who receive a payment under this scheme.

When this Ruling applies

6. This Ruling applies from 1 November 2024 to 31 December 2027.

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Ruling

7. A payment made by the ACA from the ACRA to a Player within 12 months of the termination of their employment will be an employment termination payment under section 82-130 (initial payment).

8. A payment made by the ACA from the ACRA to a Player more than 12 months after the termination of their employment will not be an employment termination payment under section 82-130. The payment will be assessable income of the Player under section 83-295 (periodic payments).

9. A payment made by the ACA from the ACRA to a Player where the payment is an employment termination payment, will not be classified as a fringe benefit under paragraph (lc) of the definition of 'fringe benefit' in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

10. A payment made by the ACA from the ACRA to a Player where the payment is not an employment termination payment apart from paragraph 82-130(1)(b), will also not be classified as a fringe benefit under paragraph (ld) of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA.

Scheme

11. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

12. The ACA is the collective and representative voice of past, present and future male and female elite international and domestic cricketers in Australia. The ACA operates as a trade union for the players who are its members.

13. Cricket Australia (CA) and the ACA recognise there is a continuing need for players to access a lump sum upon the conclusion of their playing career. It is also recognised there is a need within the industry for players to have a financial 'safety net' post the completion of their playing career. Accordingly, the current arrangements attempt to provide Eligible Uncontracted Players with an annual payment for a defined time which is an important link to the objectives of the ACRA, including to 'assist a player's transition from a professional cricket career to after professional cricket life'.

14. The current collective bargaining agreement, called the Memorandum of Understanding (MOU), between CA and the ACA is for the period 1 July 2023 to 30 June 2028. The MOU sets out:

- the agreed terms and conditions of employment of players
- the form of employment contract
- remuneration and benefits of the current players employed by CA, a State Association or W/BBL¹ Teams.

15. One of the Objects of the ACA, as outlined in the Constitution, is 'to administer and account for payment of retiring or transitional benefits to Members (including the fund known as the Australian Cricketers' Retirement Account)'.

¹ Where W/BBL stands for either the premier domestic women's or men's Twenty20 competition conducted from time to time by CA.

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16. The ACA owns and manages the ACRA to provide post-career benefits for all eligible current players when they become uncontracted, to assist with their transition from their professional cricketing career.

17. The ACRA is operated in accordance with the MOU. Key objectives of the ACRA are to:

- provide post career benefits for all Eligible Contracted Players when they become Eligible Uncontracted Players
- assist a Player's transition from a professional cricket career to after professional cricket life
- provide a funding framework to ensure that amounts will be available at the end of a Player's career.

18. CA makes annual contributions to the ACRA in accordance with the MOU. The ACRA also consists of income earned on the fund in the account.

19. The MOU provides that the ACA and the CA shall establish an ACRA Board of Management to oversee the ACA's management of the ACRA.

20. To ensure there is adequate cash flow and funding for the future payment of ACRA Benefits, estimated ACRA Benefits will be notionally allocated for each Eligible Contracted Player in the records of the account during each contract year of the term of the MOU. Under the Modernised ACRA Rules from 1 July 2023, the calculation of the future payment amount is based on:

- a fixed amount per contract year dependant on the Player's type of cricket contract
- additional amounts that are based on the matches played by the Player for the year
- a further amount referred to as a Player Specific Additional ACRA Contribution
- with adjustments made for the Notional Net Investment Return on those amounts (subject to low balance protection if applicable), and
- less any applicable taxes.

21. Only Eligible Uncontracted Players may apply to the ACA to receive ACRA benefits. Under the Modernised ACRA Rules, an 'Eligible Uncontracted Player' means a Player who was an Eligible Contracted Player, but is no longer one as of 10 November of the relevant year. An 'Eligible Contracted Player' means a Player who is a party to an Eligible Playing Contract (including by way of upgrade during the course of a contract year).

22. If a Player dies or is totally and permanently disabled, the Player will be taken to be an Eligible Uncontracted Player.

23. ACRA payments are made in accordance with Schedule D of the Modernised ACRA Rules. Schedule D provides the following payments:

Table 1: Schedule D payments

Balance range	Initial lump sum payment	Periodic years
Up to \$125,000	100%	Not applicable
\$125,000 – \$300,000	30%	3

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Balance range	Initial lump sum payment	Periodic years
\$300,001 – \$500,000	30%	5
\$500,001 – \$750,000	25%	7
\$750,001 – \$1,250,000	20%	10
More than \$1,250,000	15%	15

24. Payments to Eligible Uncontracted Players are a combination of:

- an initial lump sum payment paid as a consequence of their termination of employment as a professional cricketer, and
- where applicable, a periodic payment paid by the ACA to the Player annually over a defined time period.

The timing of the periodic payments, if required, is dependent upon the amount standing for the future benefits of the Player in the ACRA at the time prescribed within the Modernised ACRA Rules.

25. An Eligible Uncontracted Player may apply to the ACA to receive ACRA benefits. The application must be made:

- using the prescribed ACA form, with a warranty by the Player that they will be an Eligible Uncontracted Player on 10 November in the relevant year, unless they otherwise advise the ACA in writing before that date
- on or before 3 years have expired commencing from 10 November in the year they became an Eligible Uncontracted Player, and
- on or before 10 November in the year of their anticipated payment of an ACRA benefit.

26. A player holds no proprietary right or beneficial interest in the ACRA unless and until the Player becomes an Eligible Uncontracted Player and becomes entitled to payment under the ACRA rules.

27. Payments made to Eligible Uncontracted Players from the ACRA will only be taxable at the time the Player receives the payment from the ACRA.

Commissioner of Taxation

29 January 2025

Appendix – Explanation

1 *This Explanation 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.*

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Employment termination payments

28. Payments made in consequence of the termination of a taxpayer’s employment are known as employment termination payments.

29. Subsection 995-1(1) states that an ‘employment termination payment’ has the meaning given to it by section 82-130.

30. Subsection 82-130(1) states that a payment is an employment termination payment if:

- (a) it is received by you:
 - (i) in consequence of the termination of your employment; or
 - (ii) after another person’s death, in consequence of the termination of the other person’s employment; and
- (b) it is received no later than 12 months after that termination (but see subsection (4)); and
- (c) it is *not* a payment mentioned in section 82-135.

31. All the conditions within subsection 82-130(1) need to be satisfied for a payment to be an employment termination payment.

Payments received ‘in consequence of’ the termination of employment

32. To be an employment termination payment under subsection 82-130(1), the payment must be received by you:

- in consequence of the termination of your employment, or

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- after another person's death, in consequence of the termination of the other person's employment.

33. The phrase 'in consequence of' is not defined within the ITAA 1997. However, the words have been interpreted by the courts in several cases. We have also issued Taxation Ruling TR 2003/13 *Income tax: eligible termination payments (ETP): payments made in consequence of the termination of any employment: meaning of the phrase 'in consequence of'* which explains our view on the meaning of the phrase 'in consequence of' as used in Subdivision 82-C.

34. The Full High Court of Australia considered the expression 'in consequence of the termination of any employment' in *Reseck v Commissioner of Taxation (Cth)* [1975] HCA 38 (*Reseck*). The relevant issue in that case was whether amounts paid to a taxpayer by his employer at the end of 2 periods of employment, to which the taxpayer was entitled under an agreement between the employer and the taxpayer's union, were an allowance paid in a lump sum 'in consequence of retirement from, or the termination of, any office or employment ...'. Justice Gibbs concluded that the amounts were made in consequence of the termination of the taxpayer's employment. His Honour said that:

Within the ordinary meaning of the words, a sum is paid in consequence of the termination of employment when the payment follows as an effect or result of the termination ... It is not in my opinion necessary that the termination of the services should be the dominant cause of the payment ... In the present case the allowance was paid in consequence of a number of circumstances, including the fact that the taxpayer's service had been satisfactory and that the industrial agreements provided for the payment, but it was none the less paid in consequence of the termination of the taxpayer's employment.

35. Justice Jacobs also concluded that the amounts constituted an allowance that was paid in consequence of the termination of the taxpayer's employment. His Honour said:

It was submitted that the words "in consequence of" import a concept that the termination of the employment was the dominant cause of the payment. This cannot be so. A consequence in this context is not the same as a result. It does not import causation but rather a "following on".

36. The different interpretations of 'in consequence of' adopted by Justices Gibbs and Jacobs were considered by the Full Federal Court in *McIntosh, Charles v The Commissioner of Taxation* [1979] FCA 65 (*McIntosh*). The matter before the court concerned a taxpayer who one week after retirement, commuted part of the pension to which he became entitled upon his retirement, into a lump sum. The commuted payment was made out of a provident fund established by a bank for the payment of benefits to bank officers on their retirement. The issue being considered by the court was whether the commuted lump sum payment came within former paragraph 26(d) of the *Income Tax Assessment Act 1936*.

37. Justice Brennan considered the judgments of Justices Gibbs and Jacobs in *Reseck* and concluded that their Honours were both saying that a causal nexus between the termination and payment was required, though it was not necessary for the termination to be the dominant cause of the payment. Justice Brennan said that:

Though Jacobs J. speaks in different terms, his meaning may not be significantly different from the meaning of Gibbs J ... His Honour denies the necessity to show that retirement is the dominant cause, but he does not allow a temporal sequence alone to suffice as the nexus. Though the language of causation often contains the seeds of confusion, I apprehend his Honour to hold the required nexus to be (at least) that the payment would not have been made but for the retirement.

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38. In the same case, Justice Lockhart stated:

In my opinion, although the phrase is sufficiently wide to include a payment caused by the retirement of the taxpayer, it is not confined to such a payment. The phrase requires that there be a connection between the payment and the retirement of the taxpayer, the act of retirement being either a cause or an antecedent of the payment. The phrase used in section 26(d) is not “caused by” but “in consequence of”. It has a wider connotation than causation and assumes a connection between the circumstance of retirement and the act of payment such that the payment can be said to be a “following on” of the retirement.

39. TR 2003/13 considers the divergent views as to the correct interpretation of the phrase ‘in consequence of’ as interpreted by the Courts. This is explained within paragraphs 5 to 7 of TR 2003/13 which state:

5. ... a payment is received by a taxpayer in consequence of the termination of the taxpayer’s employment if the payment ‘follows as an effect or result of’ the termination. In other words, but for the termination of employment, the payment would not have been received by the taxpayer.

6. The phrase requires a causal connection between the termination and the payment, although the termination need not be the dominant cause of the payment. The question of whether a payment is received in consequence of the termination of employment will be determined by the relevant facts and circumstances of each case.

7. The greater the length of time between the termination of employment and the payment, the more likely that the causal connection between the termination and the payment will be too remote for a conclusion that a payment was received in consequence of the termination of employment. However, length of time will not be determinative when there is a presently existing right to payment of the amount at the time of termination.

Retirement benefit payments made from the Australian Cricketers’ Retirement Account

40. Under the scheme, for the purposes of retirement benefits, a Player is required to have become an Eligible Uncontracted Player. Benefits are paid in accordance with the Modernised ACRA Rules. A payment from the ACRA to a Player upon becoming an Eligible Uncontracted Player follows as an effect of the termination of their employment and therefore is received ‘in consequence of’ the termination of their employment for the purposes of subparagraph 82-130(1)(a)(i).

41. Subparagraph 82-130(1)(a)(ii) states that a payment will also be an employment termination payment where it is received by you after another person’s death, in consequence of the termination of that other person’s employment.

42. Under the scheme, a payment will satisfy the requirements of subparagraph 82-130(1)(a)(ii) where it has been made from the ACRA after the death of a Player, in consequence of the termination of their employment. Where a Player was not engaged in employment at the time of their death, any payment received from the ACRA will not be considered to be ‘in consequence of’ the termination of their employment and therefore will not be an employment termination payment under subsection 82-130(1).

Payment received no later than 12 months after the termination

43. To be an employment termination payment under subsection 82-130(1), paragraph 82-130(1)(b) provides that the payment must be received by you no later than 12 months after the termination of your employment. This is unless an exemption applies under subsection 82-130(4).

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44. Under subsection 82-130(4), an exemption to the 12-month rule will apply where:

- you are covered by a determination made by the Commissioner under subsection 82-130(5) or subsection 82-130(7), or
- the payment is a genuine redundancy payment or an early retirement scheme payment.

45. Subsection 82-130(5) states that the Commissioner may make a determination that the 12-month rule does not apply to you.

46. Under the scheme, a Player would need to make an application based on their individual circumstances where they have received a payment later than 12 months after the termination of their employment from the ACRA, in order for this subsection to apply to them.

47. Subsection 82-130(7) states that the Commissioner may, by legislative instrument, make a determination that the 12-month rule does not apply. There are 2 current determinations which have been made under subsection 82-130(7). Neither of these determinations apply in this case.

Initial payment

48. For the purposes of the initial payment as described in paragraphs 23 to 24 of this Ruling, as this payment will be made within 12 months of the Player's retirement, this payment will meet paragraph 82-130(1)(b).

Periodic payments

49. For the purposes of periodic payments, as described in paragraphs 23 to 24 of this Ruling, where an exemption from the 12 month rule does not apply under subsection 82-130(4) the periodic payment will not be an employment termination payment.

50. An exemption will not apply under subsection 82-130(4) as a determination has not been made by the Commissioner under subsection 82-130(5). While determinations have been made under subsection 82-130(7), they are not relevant in this instance. Further, the payment is not a genuine redundancy payment or an early retirement scheme payment.

51. As such, these payments will be assessable income of the Player in the income year that they are received under section 83-295.

Payments that are not employment termination payments

52. To be an employment termination payment under subsection 82-130(1), the payment must not be a payment mentioned within section 82-135. These include (among others):

- a superannuation benefit
- unused annual leave payment
- the part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170.

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Initial and periodic payments

53. An ACRA payment made to a Player is determined in accordance with the terms outlined in paragraphs 21 to 25 of this Ruling. This payment would not be a payment listed in section 82-135.

Fringe benefits tax consequences

54. A number of specific benefits are not included in the definition of a fringe benefit and are therefore not subject to fringe benefits tax under FBTAA.

55. The definition of a fringe benefit is included under subsection 136(1) of the FBTAA.

56. A fringe benefit does not include:

- (lc) an employment termination payment (within the meaning of the *Income Tax Assessment Act 1997*); or
- (ld) a payment that would be an employment termination payment (within the meaning of the *Income Tax Assessment Act 1997*) apart from paragraph 82-130(1)(b) of that Act ...

Initial payment

57. Under the scheme, an initial payment will be excluded as a fringe benefit under paragraph (lc) of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA as it is an employment termination payment.

Periodic payments

58. Periodic payments will be excluded as a fringe benefit under paragraph (ld) of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA as they would be an employment termination payment apart from paragraph 82-130(1)(b).

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References

Related Rulings/Determinations:

TR 2003/13

- ITAA 1997 82-130(7)
- ITAA 1997 82-135
- ITAA 1997 83-170
- ITAA 1997 83-295
- ITAA 1997 995-1
- FBTA 1986 136(1)

Legislative references:

- ITAA 1936 26(d)
- ITAA 1997 Subdiv 82-C
- ITAA 1997 82-130
- ITAA 1997 82-130(1)
- ITAA 1997 82-130(1)(a)(i)
- ITAA 1997 82-130(1)(a)(ii)
- ITAA 1997 82-130(1)(b)
- ITAA 1997 82-130(4)
- ITAA 1997 82-130(5)

Cases relied on:

- *Reseck v Commissioner of Taxation (Cth)* [1975] HCA 38; 133 CLR 45; 75 ATC 4213; 5 ATR 538; 49 ALJR 370
 - *McIntosh, Charles v The Commissioner of Taxation* [1979] FCA 65; 45 FLR 279; 79 ATC 4325; 10 ATR 13; 25 ALR 557
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