


# ***CR 2016/92 - Income tax: leave - Deferred Salary Scheme for employees of St Peter's College in Adelaide***

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## Class Ruling

### Income tax: leave – Deferred Salary Scheme for employees of St Peter’s College in Adelaide

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#### **📌 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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

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

#### **Relevant provision**

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 are to the ITAA 1997 unless otherwise indicated.

#### **Class of entities**

3. The class of entities to which this Ruling applies is employees of St Peter’s College in Adelaide who participate in the Deferred Salary Scheme described in paragraphs 8 to 20 of this Ruling. 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 8 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.

## Date of effect

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7. This Ruling applies from 22 September 2016. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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8. The following description of the scheme is based on information provided by the applicant. Clause 24 of the St Peter's College Enterprise Agreement 2015 forms part of, and is to be read with, the description.
9. St Peter's College (the School) has introduced a Deferred Salary Scheme into their Enterprise Agreement which covers the period 1 January 2015 to 31 December 2017, and was enacted on 22 September 2016.
10. The Deferred Salary Scheme allows employees of the School (the Participants) to take a year away from their position at the School for professional development opportunities and renewal experiences such as participation in postgraduate study or working in overseas education systems.
11. All permanent full-time and part-time employees who have been employed by the School for a minimum of two continuous years of service are eligible to apply to participate in the Deferred Salary Scheme. The approval of applications is based on the needs and requirements of the School.

12. The Deferred Salary Scheme is a five year scheme which allows Participants to defer an entitlement to salary during the first four years of their participation in the scheme in return for a paid year of leave during the fifth year of the scheme.

13. Participants receive 80% of their normal fortnightly salary (plus any associated allowances) during the first four years of the Deferred Salary Scheme, during which time the Participants continue to work their normal agreed hours and accrue their regular leave entitlements. The remaining 20% of their normal fortnightly salary (plus any associated allowances) is deferred to the fifth year, being the year of leave.

14. The period of leave is for twelve months over the calendar year ending 31 December and does not break the Participant's continuity of service.

15. Participants are not able to return to a position at the School during the twelve month leave period, nor do they accrue any leave entitlements during that period.

16. A Participant's deferred salary is accounted for by the School by a debit entry to a separate deferred salary expense account and a corresponding credit entry to a deferred salary liability account in the general ledger. Therefore, the amount is recognised by the School on its balance sheet as a future liability to pay the Participant.

17. The deferred salaries are not held in separate bank accounts on behalf of individual Participants and no interest (or other benefits) is paid on, or loans made in respect of, those deferred salaries. Instead, the monies are held by the School in the deferred salary expense account which may accrue interest for the School and are used to offset the administrative costs of the scheme.

18. The deferred salary is paid to the Participant when:

- the leave under the Deferred Salary Scheme is taken (with a choice to be paid either fortnightly; over two payments; or in a lump sum), or
- the Participant terminates their employment with the School or otherwise withdraws from the Deferred Salary Scheme prior to the leave being taken (paid as a lump sum).

19. The Deferred Salary Scheme rules enable a Participant to:

- defer the taking of leave by agreement with the School
- withdraw from the scheme at any time, and/or
- suspend their participation in the scheme for a period of up to twelve months.

20. A suspension of contributions under the Deferred Salary Scheme for a period of 12 months, at the request of the Participant, is subject to the approval of the School and, upon approval, extends the taking of the year of leave by one year. Periods of suspension of less than one year result in a reduction of the deferred salary to be paid in the fifth year.

## Ruling

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21. The deferred salary paid to Participants under the Deferred Salary Scheme is included in their assessable income in the year in which it is received under section 6-5.

22. As the deferred salary is not considered to be an amount that has been applied or dealt with at the direction of the Participants for the purposes of subsection 6-5(4), it is not included in their assessable income in the year of deferral.

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**Commissioner of Taxation**

7 December 2016

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## Appendix 1 – Explanation

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**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.*

23. Participants in the Deferred Salary Scheme vary their employment contracts. In return for accepting a reduced salary for future employment services they provide to the employer, the Participants have an entitlement to receive a deferred salary while on leave.

24. 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.

25. Income from employment is generally ordinary income and derived only when received.

26. A Participant receives a reduced salary under the Deferred Salary Scheme for the first four years of the scheme. This reduced salary amount is included in their assessable income under subsection 6-5(1) in the income year of receipt.

27. Under the Deferred Salary Scheme the Participants defer receipt of an amount of salary until a later income year. The amount of the deferred salary of a Participant is included in their assessable income under subsection 6-5(1) in the income year of receipt, being the year in which they take their period of leave, or earlier in the event of their withdrawal from the Deferred Salary Scheme during the four year deferral period.

28. Subsection 6-5(4) provides that in working out whether an amount of ordinary income has been derived, and (if so) when it was derived, the amount is taken to have been received as soon as it is applied or dealt with in any way on behalf of the taxpayer or as the taxpayer directed.

29. 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 at the time it is accounted for in the School's general ledger account. While the 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 18 of this Ruling occurs. In these circumstances subsection 6-5(4) does not apply.

## **Pay as you go (PAYG) withholding**

30. At the time of paying the deferred salary to the Participant, the School is required to withhold amounts from these payments in accordance with its PAYG withholding obligations under Division 12 of Schedule 1 to the *Taxation Administration Act 1953*.

## **Appendix 2 – Detailed contents list**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

- 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

*Legislative references:*

- ITAA 1997
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ATO references

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