



# Do I have to pay tax on my personal injury compensation?

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If you have received or are about to receive a personal injury settlement, one of the first questions you may ask is: Do I have to pay tax on my personal injury settlement? The short answer is no. In Australia, most personal injury settlements are not taxable. However, there are exceptions which depend on the structure of the settlement and the type of damages (compensation) awarded.

In Australia, tax treatment is governed by federal tax law, primarily the Commonwealth *Income Tax Assessment Act 1997*. Understanding whether a personal injury settlement is taxable requires looking beyond the headline figure and examining the different components of the payment.

This blog will explore how personal injury settlements are treated for tax purposes and explain when compensation may or may not attract tax obligations.

## What is a personal injury settlement?

If you have a serious and permanent injury because of the fault/negligence of someone else, you may be able to make a claim against that person, the organisation that caused the injury or their insurer for compensation.

A personal injury case may arise from:

- [workplace injuries](#);
- medical negligence;

- sporting accidents;
- [motor vehicle accidents](#);
- [public liability](#) – injuries in a public place;
- product liability – injuries caused by faulty products.

If successful, you may be entitled to receive your compensation in the form of either a lump sum payment or periodic payments through a structured settlement or order.

## The general rule on tax and personal injury compensation?

The general rule is that common law compensation for personal injury is not considered income, meaning it cannot be taxed. This applies whether you receive a lump sum payment or a structured settlement.

This is because personal injury compensation is usually paid to compensate you for the loss of the chance to earn income, together with your pain and suffering, rather than as a reward for services rendered or work performed. This is to help those who are injured get back on their feet following an injury or accident.

The Australian Tax Office (ATO) generally does not treat compensation as assessable income because:

- it is not a reward or profit, but rather a payment to recognise the impact of the injury and to provide financial support for losses and needs that arise because of it;
- it typically covers reimbursement of past and future medical treatment expenses, future care needs, pain and suffering, as well as loss of enjoyment and quality of life;
- the law recognises that these amounts are not earned income.

A final compensation figure often reflects a combination of factors, including:

- non-economic loss, such as pain and suffering;
- past and future medical and treatment expenses;
- care and assistance needs;
- loss of earning capacity over time, rather than simple wage replacement.

For this reason, it is misleading to view a personal injury settlement as income. The settlement amount is a global figure that recognises multiple types of loss and future needs.

## Situations where tax may apply to your personal injury compensation

Although most settlements are tax-exempt, there are some situations where tax could be payable.

## Weekly benefits for loss of income

If compensation is paid out specially for a weekly benefit (for loss of income, for example), rather than a common law settlement (as a lump sum payment), then it could be treated as taxable income.

For example, if you are receiving compensation for [weekly loss of earnings from the Transport Accident Commission \(TAC\)](#) or [WorkCover weekly payments](#), then these payments are subject to PAYG tax withholding:

- Tax is withheld before the payment is made to you;
- The withheld tax is reported to the ATO;
- When you lodge your tax return, the ATO is already aware that tax has been paid on those amounts.

## Income protection payments

If you are pursuing a claim for income protection payments through insurance held either inside or outside super, these payments are treated as income and will be taxed accordingly.

## TPD claims

If you have suffered an injury that is likely to permanently prevent you from working, then you may be entitled to claim a Total and Permanent Disability benefit. Please see our early blog, [“TPD claims – your complete guide”](#), for more information about TPD claims.

Whether this benefit is taxed or not depends on a few factors, including whether your TPD policy is through your superannuation fund or through a standalone disability insurance policy outside super.

## TPD insurance held inside superannuation

When a TPD insurance is held inside super, and you have a successful claim, the benefit is usually paid into your superannuation account first. Once it lands there, it becomes part of your overall super balance.

This means any amount you later take out is treated the same way as a normal super withdrawal for tax purposes.

If you have reached your preservation age and you are no longer working, withdrawals from your super are usually tax-free. In that situation, you would not pay tax on the TPD benefit when it is released to you.

If you are under 60, the process is different. You must apply to access the TPD component of your super balance on the basis of permanent incapacity. The amount you withdraw may be taxed.

However, most people receive a reduced tax rate because the payment relates to a permanent disability that prevents them from working. To access this concession, the super fund must be given medical evidence that satisfies tax requirements.

## TPD insurance held outside superannuation

TPD benefits paid from a policy held outside super are generally treated differently. These payments are not regarded as income and are usually not taxed. In most cases, the benefit is paid to you in full, without tax being applied.

## Investment income

Once you receive your compensation, how you use it matters. If you invest the money in, for example, shares, property or a savings account, then any income generated from those investments is taxable.

This could mean interest from a high-yield savings account, dividends from shares or capital gains tax from property investments. The primary amount (the original amount you received in your compensation payout) would be tax-free.

## Get help from a personal injury lawyer

Every personal injury settlement is different, and assumptions can be costly. Getting the right legal, financial and tax advice early can ensure your settlement is structured correctly and that you understand your obligations, including tax obligations.

Recovering from a personal injury is stressful enough without worrying about the tax implications of your compensation. Guardian Injury Law can help you understand how your compensation is structured and work with your advisers to protect your entitlements, ensuring there are no nasty surprises when you receive your payout.

## Contacting Guardian Injury Law

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