


# ***CR 2012/31 - Income tax: Australian Government Sport Training Grant Scheme payments provided by the Australian Sports Commission***

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## Class Ruling

### Income tax: Australian Government Sport Training Grant Scheme payments provided by the Australian Sports Commission

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#### **❶ 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

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

### Relevant provisions

2. The relevant provisions dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 6-10 of the ITAA 1997;
- section 104-25 of the ITAA 1997; and
- section 118-37 of the ITAA 1997.

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

## Class of entities

3. The class of entities to which this Ruling applies comprises athletes who are not carrying on a business as a sports person and are in receipt of payments provided by the Australian Sports Commission (ASC) under the Australian Government Sport Training Grant (AGSTG) Scheme.

## Qualifications

4. The Commissioner makes this Ruling 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 9 to 17 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

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8. This Ruling applies from 1 July 2005 to 30 June 2010. The Ruling continues to apply after 30 June 2010 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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).

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## Scheme

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

**Note:** certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

10. The AGSTG Scheme was established by the ASC to implement a new initiative, announced by the Australian Government in the 2005/2006 Budget, to assist athletes in their preparations for international competition.

11. The primary objective of the AGSTG scheme was to provide direct funds to targeted elite athletes, selected on the basis of their medal potential and individual need.

12. To be eligible to receive a payment under the scheme athletes were required to be identified as being medal potential by their respective National Sporting Organisation (NSO) and were also required to:

- be a current member of a national team or training squad;
- maintain a preparation and competition program, developed in consultation with and endorsed by the NSO, of a sufficient standard to enable them to perform to benchmark standard or higher; and
- state and be able to demonstrate an after tax income of less than \$60,000 AUD per annum, averaged over four years.

13. Medal potential was based on performance at agreed benchmark events. However, special consideration could be applied where:

- benchmark event performances did not validate the athlete or team nominated, but a case could be made through additional supporting information that medal potential existed due to a variety of circumstances; or
- benchmark events did not exist or were not available for the athlete, but a case could be made that medal potential existed.

14. The funding process operated as follows:

- Athletes were nominated once per year by NSOs for funding consideration;

- The ASC would consider nominations, through the Moderating Group which was made up of six ASC representatives, one Australian Commonwealth Games Association representative and one National Elite Sports Council representative;
- The AGSTG Moderating Group would then make recommendations to the ASC board;
- The ASC board would ultimately determine allocations and the ASC would notify NSOs;
- The NSOs would liaise with affected Athletes; and
- The ASC would deal with the administrative aspects of AGSTG payments.

15. An AGSTG recipient could receive only one allocation per financial year. Each allocation was paid by either one payment or split into two payments. An athlete who received an allocation in a financial year would not necessarily be entitled to two payments in that year.

16. In order to receive a payment, athletes were required to execute an Athlete Agreement ('the Agreement') and to meet the conditions set out in that Agreement.

17. The Athlete Agreement included the following clauses:

5. I declare and warrant that as at the date of signing this agreement;
  - (a) I am an Australian citizen or have permanent residency status;
  - (b) I am eligible to represent Australia under the international rules of my sport; and
  - (c) I did not earn, or anticipate having earned, an annual after tax income of more than \$60,000 AUD per annum (averaged over the last four financial years ending 30 June 200X) [from all sources including the receipt of any accommodation, meals and/or living allowances under residential programs (e.g. AIS Residential Athletes) and Australian Olympic/Paralympic Committee Funding schemes or other direct athlete support payments].
6. I agree to:
  - (a) continue to train and perform in my sport at a level that is considered by the ASC and my sport's National Sporting Organisation (my NSO) as medal potential standard for the <Event>.
  - (b) work towards achieving my full potential in my sport;
  - (c) maintain a lifestyle conducive to sporting excellence;
  - (d) abide by both the rules and the spirit of my sport;

- (e) abide by all obligations that I owe to my NSO as a member of any team or squad of my NSO;
- (f) be available to compete for Australia in my sport;
- (g) not compete for a country other than Australia in my sport; and
- (h) comply with the Anti-Doping Policies of the ASC, my sport's International Federation, and my NSO.

7. I agree to undertake an Athlete Career and Education Services (ACE) assessment at the Australian Institute of Sport or at my State/Territory Institute/Academy of Sport.

8. I agree that:

- (a) the ASC may, either during or after the term of this agreement, refer to me as an athlete that has received an AGSTG, including disclosing to the public that I am an athlete that has received an AGSTG and the amount of the AGSTG paid to me;
- (b) where reasonable and appropriate to do so, I will recognise the support of the Australian Government and the ASC being provided to me through the AGSTG scheme; and
- (c) if requested by the ASC, I will co-operate with the ASC and its contracted researchers in relation to any ASC evaluation of the AGSTG scheme, including participating in any survey or case study and, if requested, will consent to the use of my personal information for the purposes of the evaluation and the reporting of its results.

9. If, either during or after the term of this agreement, I make any arrangement or agreement with another person (Sponsor) for sponsorship or to be involved in the marketing or advertising of goods or services:

- (a) I will not during any marketing or advertising or any sponsorship activity refer or allude to my association with the ASC unless I first obtain the written consent of the ASC; and
- (b) I will require any Sponsor not to make reference or allusion to my association with the ASC unless the written consent of the ASC has first been obtained.

10. I agree that:

- (a) if I breach any grant conditions (including a breach of the warranty in clause 5), the ASC may require me to repay to the ASC the AGSTG previously paid to me under this agreement;
- (b) if the ASC requires me to repay AGSTG previously paid to me under this agreement, the ASC will give me written notice setting out the amount payable by me and that amount will be a debt due and payable by me to the ASC; and

- (c) the ASC may exercise its rights under this clause 10 at any time during or after the term of this agreement.

15. I agree that nothing in this agreement creates a relationship of employment or agency between the ASC and me and that I will not be deemed, for any purpose, to be an employee or agent of the ASC.

## Ruling

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18. Payments received under the AGSTG Scheme are not assessable income for the purposes of section 6-5 or section 6-10.

19. CGT event C2 under section 104-25 happens when an athlete receives a payment. However, any capital gain or capital loss is disregarded under subsection 118-37(2).

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**Commissioner of Taxation**

9 May 2012

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## 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.*

20. A payment or other benefit received by a taxpayer is assessable income if it is:

- income in the ordinary sense of the word (ordinary income); or
- an amount or benefit that through the operation of the provisions of the tax law is included in assessable income (statutory income).

### Ordinary income

21. Subsection 6-5(1) states that the assessable income of a taxpayer includes income according to ordinary concepts (ordinary income).

22. The legislation does not provide specific guidance on the meaning of income according to ordinary concepts. However, a substantial body of case law exists which identifies likely characteristics.

23. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*, the Full High Court stated:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.<sup>1</sup>

24. Amounts that are periodical, regular or recurrent, relied upon and expected on a periodic basis by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income,<sup>2</sup> as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.<sup>3</sup> Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.<sup>4</sup>

<sup>1</sup> (1990) 170 CLR 124 at 138; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

<sup>2</sup> *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82; 5 AITR 443.

<sup>3</sup> *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 570; (1956) 11 ATD 68; *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

<sup>4</sup> *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; (1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 456 (per Fullagar J).



25. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.<sup>5</sup> The whole of the circumstances must be considered<sup>6</sup> and the motive of the payer may be relevant to this consideration.<sup>7</sup>

26. The athletes in receipt of AGSTG payments were required to maintain a minimum level of performance, continue to participate in international competitions and compete only for Australia. Athletes were also required to adhere to the anti-doping policies of the ASC, their international federation and their national sporting organisation. The Commissioner does not consider that these factors were sufficient to amount to an employer/employee relationship between the ASC and the athlete.

27. The AGSTG payments were made to elite athletes to assist them to maintain a training regime to enable them to successfully compete internationally. The fact that an athlete qualified for a payment in one year did not automatically qualify them for payments in later years. Athletes were required to meet all the eligibility criteria each year, including being assessed on medal potential based on their performance at agreed benchmark events. Therefore, although an individual athlete may receive several payments, the payments are not considered to be regular, periodic or expected. An athlete could not rely on receipt of an AGSTG payment in a later year. These factors, when considered together, lead to the conclusion that the AGSTG payments are not income according to ordinary concepts.

#### **Statutory income: allowances and other things provided in respect of services rendered**

28. Section 6-10 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included as assessable income by another provision.

29. Section 10-5 lists provisions about statutory income and included in this list is section 15-2.

30. Section 15-2 includes in a taxpayer's assessable income the value of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to the taxpayer 'in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by' the taxpayer.

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<sup>5</sup> *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 375; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73; (1956) 6 AITR 248 at 254; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375 at 402; 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

<sup>6</sup> *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627; [1953] HCA 13.

<sup>7</sup> *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

31. Whilst the athletes are not considered to be 'employees', section 15-2 also includes in assessable income those allowances etc which are paid in respect of 'services rendered'.

32. There was no agreement that required athletes to provide or supply services to the ASC. The athletes were required to meet certain conditions in order to qualify for the payment, however these conditions do not amount to the rendering of services to the ASC. As such, the AGSTG payments are not assessable under section 15-2 because the athletes were not considered to be employees, nor were they 'rendering services'.

### **Capital gains tax**

33. An athlete's entitlement to receive an AGSTG payment is a CGT asset under subsection 108-5(1) that is acquired when the athlete signs the agreement.

34. CGT event C2 happens under section 104-25 when a recipient's entitlement to receive the grant is satisfied. The time of the CGT event under subsection 104-25(2) is when the payment is made.

35. However, any capital gain or capital loss resulting from CGT event C2 happening is disregarded under paragraph 118-37(2)(a). Paragraph 118-37(2)(a) provides a CGT exemption for a capital gain or capital loss that results from the receipt of a payment as reimbursement or payment of expenses under a scheme established by an Australian government agency under an enactment. The AGSTG scheme is such a scheme.

### **General deductions**

36. As any AGSTG payments received by an athlete is not assessable income, all losses and outgoings that are incurred in connection with the athlete's sporting activities are not allowable as a deduction under section 8-1. Nor will a deduction be allowable under any other provision of the ITAA 1997.

### **Pay as You Go Withholding**

37. As explained above, AGSTG payments made to athletes are not assessable income. The payments are not regarded as a withholding payment under Division 12 of Schedule 1 to the *Taxation Administration Act 1953*. The ASC will not be required to withhold amounts from these payments, nor will they have any other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, providing payment summaries, or annual reporting.

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

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38. 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 2006/10

### *Subject references:*

- CGT asset
- CGT assets
- CGT events C1-C3 – end of a CGT asset
- CGT exemptions
- exempt income
- sportspersons
- voluntary payments to sportspersons

### *Legislative references:*

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6 5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 104-25
- ITAA 1997 104-25(2)
- ITAA 1997 108-5(1)
- ITAA 1997 118-37
- ITAA 1997 118-37(2)
- ITAA 1997 118-37(2)(a)
- TAA 1953
- TAA 1953 Sch 1 Div 12
- Copyright Act 1968

### *Case references:*

- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation (1977) 34 FLR 375; 77 ATC 4255; (1977) 7 ATR 519
- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; (1952) 10 ATD 82; 5 AITR 443
- Federal Commissioner of Taxation v. Rowe (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392
- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 570; (1956) 11 ATD 68
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367
- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570; [1953] HCA 13

### ATO references

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