


CR 2013/16 - Income tax: Department for Communities and Social Inclusion (South Australia) Individualised Funding Program

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Class Ruling

Income tax: Department for Communities and Social Inclusion (South Australia) Individualised Funding Program

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	27
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	32
Appendix 2:	
Detailed contents list	57
Explanation	

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, 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 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 provisions dealt with in this Ruling are:

- section 159P of the *Income Tax Assessment Act 1936* (ITAA 1936),
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997),
- section 8-1 of the ITAA 1997,
- section 15-2 of the ITAA 1997, and
- Subdivision 20-A of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies comprises:
- people with a disability who have entered into an Individualised Funding Agreement (Agreement) with the Department for Communities and Social Inclusion (DCSI) to receive payments under the Individualised Funding Program (Program), and
 - legally nominated or recognised carers, guardians, administrators or attorneys of people with a disability who have entered into an Agreement with the DCSI to receive payments under the Program on behalf of a person with a disability.

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 9 to 27 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 January 2013. 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

9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application dated 20 November 2012
- DCSI Individualised Funding Information Package
- DCSI Individualised Funding Participant Guidelines
- Individualised Funding Agreement template.

10. The *Disability Services Act 1993* (SA) (DSA 1993) provides the legislative basis for the funding of disability services.

11. The Principles in Schedule 1 of the DSA 1993 have the purpose of ensuring that persons with disabilities are treated with dignity and have the same fundamental human rights as other members of the community.

12. The objectives of the DSA 1993 are set out at Schedule 2. They include ensuring that disability services are designed and administered so as to 'achieve positive outcomes for persons with disabilities', such as 'increased independence, increased education, training and employment opportunities and integration into, and participation in the life of, the community'.

13. Section 4 of the DSA 1993 provides that the Minister for Disabilities is responsible for approving funding for the purposes of disability services. The Minister may grant money to any person, body or authority, or to any person with a disability or a carer of such a person, for the purpose of obtaining the care, support or assistance the person with the disability or the carer may need. In performing his or her functions under this section, the Minister must seek to further the objects of the DSA 1993.

14. The DCSI Individualised Funding Information Package sets out the background for the Program.

15. A person with a disability who is eligible for South Australian Disability Services support and who is in receipt of a disability support package (personal budget) can choose to participate in the Program.

16. A participant or a legally nominated or recognised carer, guardian and administrator or attorney of the participant may choose to receive the personal budget via direct payments on behalf of the participant.

17. A participant may also choose to use a host agency (a disability service provider registered on the Disability Services Provider Panel to host self management arrangements) who will receive the personal budget and have a service agreement with the DCSI to put the participant's Personal Budget Plan in place. The participant may choose to receive the personal budget directly but have the support of a financial intermediary or broker to assist with arranging payments for services and record keeping.¹

18. An Individualised Funding Facilitator from the DCSI will work with a participant to formulate a Personal Budget Plan, which needs to be approved by the authorised delegate.

19. The Personal Budget Plan will detail:

- the funding administration arrangement the participant will use to self-manage the funding
- the specific services or items the participant will be purchasing and which service providers the participant will be purchasing the services from
- the cost of the services or items
- Any goods and services tax that is payable
- other information that is critical to the participant's support arrangements.

20. After the Personal Budget Plan is approved, a participant then enters into an Agreement with the DCSI, based on the approved Personal Budget Plan. The Agreement details the amount of the personal budget and the payment schedule. Participants are paid in advance in monthly instalments over the term of the Agreement.

21. Once the Agreement is signed, notices are given to existing services and the participant can commence arranging new services in line with timeframes for commencement of payments under the Program.

22. A separate bank account must be established for the purposes of receiving the payments under the Program. The bank account must not have a credit or overdraft facility, nor be linked to any other bank account.

23. Any interest earned on the account becomes part of the payments under the Program and can only be spent in accordance with the participant's Personal Budget Plan.

¹ Financial intermediaries or brokers and host agencies are not included in the class of entities to which this Ruling applies.

24. A participant is required to keep records for seven years, including the approved Personal Budget Plan, receipts, invoices, contracts with service providers, and bank statements.

25. A participant (or host agency, if applicable) is required to fill out an Acquittal Form every twelve months and provide it to the Individualised Funding Facilitator along with copies of the approved Personal Budget Plan, receipts, invoices, contracts with service providers and bank statements.

26. At the end of a 12 month period, a participant is required to repay to the DCSI any unspent payments made under the Program, including any unspent bank interest accrued on deposits of the payments in the separate bank account. A participant is also required to repay payments that were spent on things not detailed in their Personal Budget Plan.

Ruling

27. The payments received under the Program are not ordinary income and do not form part of a participant's assessable income under section 6-5.

28. The interest earned on payments deposited into a participant's bank account under the Program is not ordinary income and does not form part of the participant's assessable income under section 6-5.

29. The payments received under the Program are not statutory income and do not form part of a participant's assessable income under section 6-10 because they:

- are not given or granted to participants in relation to employment or services rendered under section 15-2, and
- are not assessable recoupments of a participant under Subdivision 20-A.

30. Any losses or outgoings incurred in managing or obtaining the disability services under the Program are not deductible under section 8-1 or any other provision of the ITAA 1997.

31. For relevant medical expenses which are met from payments under the Program, the rebatable amount for the purposes of the medical expenses tax offset in section 159 of the ITAA 1936 will be nil.

Appendix 1 – Explanation

① *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.*

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

- income according to ordinary concepts (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

33. Under subsection 6-5(1) an amount is assessable income if it is ordinary income.

34. In determining whether an amount is ordinary income, the courts have established the following principles:

- what receipts ought to be treated as income must be determined in accordance with the ordinary concepts and usages of mankind, except in so far as a statute dictates otherwise,
- whether the payment received is income depends upon a close examination of all relevant circumstances, and
- whether the payment received is income is an objective test.

35. Relevant factors in determining whether an amount is ordinary income include:

- whether the payment is the product of any employment, services rendered, or any business,
- the character of the payment in the hands of the participant,
- the form of the payment; that is, whether it is received as a lump sum or periodically, and
- the motive of the person making the payment. Motive however, is rarely decisive as in many cases a mixture of motives may exist.

36. A participant does not receive payments under the Program as an employee of DCSI or in relation to the carrying on of a business. Therefore the payments are not the product of any employment or any business.

37. However, whether the payments under the Program have been received for services rendered must be examined, as payments to a taxpayer for services rendered are assessable income, even though the taxpayer does not provide those services as an employee or in carrying on a business.

38. Under the terms of the Agreement, while a participant obtains and manages the goods and services, they do not receive any amount as a reward for taking on this role. The Agreement permits the payments under the Program to be used only for purchasing care, support or assistance the person with the disability may need and meeting the direct costs of managing these supports. The participant must account for the use of the payments and must repay any money not used for approved purposes. At the end of a 12 month period, a participant is required to repay to the DCSI any unspent payments, including any unspent bank interest accrued on deposits of the payments in the separate bank account. A participant is also required to repay payments that were spent on things not detailed in their Personal Budget Plan.

39. In these circumstances, the payments received under the Program are not the product of any services rendered.

40. With respect to the character of payments received under the Program, in *Federal Commissioner of Taxation v. Rowe* (1997) 187 CLR 266 at 279, Brennan CJ, Dawson, Toohey and McHugh JJ held:

The character of a receipt is assessed by reference to its character in the hands of the taxpayer, not the character of the expenditure which produces the payment to the taxpayer. And this is so in the case of a voluntary payment.

41. The character of a payment in the hands of a participant in the present case is a payment for a specific purpose; namely, for the purpose of obtaining the care, support or assistance the person with the disability may need. The participant has to repay any amount that is unspent at the end of the year. The payments under the Program in the hands of the participants do not have the character of income.

42. As to the form of payments under the Program, there is an element of periodicity in the receipt of the payments in that they are paid in monthly instalments. However, in *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568, Fullagar J held that this factor while not unimportant is not decisive of whether or not payments are characterised as ordinary income.

43. With respect to motive, a primary motive of the DCSI in providing a personal budget via direct payments is to give participants non-material benefits such as increased dignity, self-determination and capacity to integrate into the life of the community.

44. Consideration of the relevant circumstances of the payments, and the relevant factors for determining whether the payments are ordinary income in the hands of a participant for the purposes of section 6-5, leads to the conclusion that the payments are not ordinary income of the participants.

Statutory income

45. Section 6-10 includes in assessable income amounts that are not ordinary income. These amounts are called statutory income. A list of the statutory income provisions can be found in section 10-5. That list includes references to section 15-2 and Subdivision 20-A.

Employment or services rendered

46. Section 15-2, provides that assessable income shall include:

... the value to you of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you ...

47. As discussed above, the participants do not receive the payments under the Program for any employment or services rendered. Therefore the payments to the participants are not statutory income under section 15-2.

Assessable recoupment

48. Subdivision 20-A operates to include in assessable income amounts received as recoupments of specified losses or outgoings allowed or allowable as deductions. As the payments under the Program are not being made by way of insurance or indemnity, the relevant provision is subsection 20-20(3) which provides that an amount is an assessable recoupment of a loss or outgoing if a taxpayer:

- receives the amount (except by way of insurance or indemnity), and
- can deduct an amount for the loss or outgoing in the current year or has deducted or can deduct an amount for it in an earlier year under a provision listed in the tables at section 20-30.

49. As the payments under the Program are not made by way of insurance or indemnity and no deduction is allowable or would be allowable to the participant in respect of the expenditure incurred for the disability services (see paragraph 53 of this Ruling), the payments under the Program are not assessable recoupments and therefore no amounts are included in participants' assessable incomes under Subdivision 20-A.

Interest earned

50. Interest earned on money held in a bank account (bank interest) is usually ordinary income and assessable to the owner or owners of the bank account.

51. In the present case, however, any bank interest accrued on payments under the Program deposited in a separate bank account forms part of the payments and, for the reasons referred to in paragraphs 36 to 44 of this Ruling above with respect to the payments themselves, is not ordinary income.

52. As there is no provision listed in section 10-5 which includes bank interest as statutory income (see paragraph 45 of this Ruling), bank interest accruing to payments under the Program in a participant's bank account is not statutory income of the participant.

General deductions

53. As the payments under the Program received by the participants are not assessable as either ordinary or statutory income, the losses and outgoings that are incurred in connection with those payments are not allowable as deductions under section 8-1 or any other provision of the ITAA 1997. Consequently, expenses incurred by a participant in acquiring the goods and services in accordance with their approved Personal Budget Plan are not deductible.

Medical expenses tax offset

54. Section 159P of the ITAA 1936 provides that an amount paid by a taxpayer as medical expenses less any amount paid, or entitled to be paid, to the taxpayer or any other person in respect of those medical expenses, is a rebatable amount for the purposes of the medical expenses tax offset.

55. Medical expenses include:

- payments to a legally qualified medical practitioner, nurse or chemist, or a public or private hospital, in respect of an illness or operation,
- payments for therapeutic treatment administered by direction of a legally qualified medical practitioner, and
- payments made as remuneration of a person for services rendered by him as an attendant of a person who is blind or permanently confined to a bed or invalid chair.

56. Some or all of the expenses of the participants incurred for the acquisition of goods or services under the Program may qualify as medical expenses. However, for the purposes of section 159P of the ITAA 1936, any medical expenses must be reduced by any payment received or receivable in respect of those expenses to determine the rebatable amount. For relevant medical expenses which are met from payments under the Program, the rebatable amount for the purposes of the medical expenses tax offset will be nil.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provision(s)	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Ruling	27
Appendix 1 – Explanation	32
Ordinary income	34
Statutory income	45
Employment or services rendered	46
Assessable recoupment	48
Interest earned	50
General deductions	53
Medical expenses tax offset	54
Appendix 2 – Detailed contents list	57

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- assessable income
- assessable recoupments
- deductions & expenses
- disabled care expenses
- income
- medical expenses
- medical expenses rebates
- rebates and offsets

Legislative references:

- ITAA 1936
- ITAA 1936 159P
- 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 Subdiv 20-A
- ITAA 1997 20-20(3)
- ITAA 1997 20-30
- TAA 1953
- Copyright Act 1968
- DSA 1993
- DSA 1993 4
- DSA 1993 Schedule 1
- DSA 1993 Schedule 2

Case references:

- *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; [1952] HCA 65
- *Federal Commissioner of Taxation v. Rowe* (1997) 187 CLR 266; (1997) 97 ATC 4317; (1997) 143 ALR 406; (1997) 35 ATR 432; (1997) 71 ALJR 624; [1997] 7 LegRep 2

ATO references

NO: 1-4F7L5QJ

ISSN: 1445-2014

ATOLaw topic: Income Tax ~~ Assessable income ~~ government payments