



CR 2015/76 - Income tax: Sidney Myer Creative Fellowship grants

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 This document has changed over time. This is a consolidated version of the ruling which was published on *30 September 2015*



Class Ruling

Income tax: Sidney Myer Creative Fellowship grants

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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 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 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 6-10 of the ITAA 1997
- section 10-5 of the ITAA 1997, and
- section 15-2 of the ITAA 1997.

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

Class of entities

3. The class of entities to which this Ruling applies are individuals who are awarded (recipients) the Sidney Myer Creative Fellowships (fellowships) by the Trustee of the Sidney Myer Fund (SMF).

Qualifications

4. The Commissioner makes this Class Ruling based on the precise scheme identified in the Class 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 22 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

7. This Ruling applies from 1 July 2015 and to all income years after its date of issue. 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

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

9. The SMF is a philanthropic foundation registered as a charity with the Australian Charities and Not for Profits Commission.

10. The SMF is a charity endorsed by the Commissioner of Taxation to access the following tax concessions:

- (a) GST concession, and
- (b) Income tax exemption.

11. Each year the SMF awards fellowships to individual artists, arts managers and leaders in the humanities who have demonstrated outstanding talent and exceptional courage with respect to their artistic or cultural practice.

12. The fellowship is an unrestricted, untied cash grant of \$160,000 that is paid to the recipient over two years in half yearly instalments of \$40,000.

13. Each year the SMF awards the fellowships to between six and ten recipients nationally.

14. The fellowships are not awarded in recognition of the achievement of a task or milestone or the creation of a product. The fellowships are principally in recognition of individuals who have dedicated themselves to the generation and propagation of Australia's artistic and cultural reputation through their talent and bravery. The fellowships are a tribute to excellence and innovation made by recipients.

15. Artists and cultural creators (which includes arts managers such as curators of galleries and museums, events producers, presenters and festival directors) are eligible for nomination.

16. The criteria applicable to nominees for a fellowship are:

- (a) The nominee must have a recognisable practice in visual, performing, interdisciplinary, new media, literary arts or the humanities (artistic field or creative practice).
- (b) The nominee must establish that their endeavour in their artistic field or creative practice is at least seven years old, but not more than 15 years old.
- (c) The nominee must be an Australian citizen.
- (d) The nominee must permanently reside in Australia for the two years over which the cash grants are awarded.
- (e) The nominee must be nominated by a third party, that is, by an individual who is not related to the nominee. The nominee must in no way be beholden to his or her nominator. Notably, nominees for a fellowship are not permitted to nominate themselves.
- (f) The nominees must not have previously been awarded a fellowship. Former recipients of fellowships are prohibited from being nominated again.

17. The selection process is a competitive one and not all nominations are successful.

18. The assessment of the merit of the nominations for the fellowships is made by a rotating panel of national experts referred to as the 'National Peer Review Panel' (the panel) who judge nominees' submissions by the following two criteria:

- (a) the outstanding talent shown by the nominee in their relevant artistic field or creative practice, and

- (b) the exceptional courage shown by the nominee in their relevant artistic field of creative practice. This criterion considers the nominee's courage with respect to the nominee's extension of the artistic field or creative practice as demonstrated by the type of work, the subject matter of the work, the artistic evolution of the artistic field or creative practice and the ability to propagate or expand the horizon of the artistic field or creative practice (for example to a greater audience). It should be noted that this criterion does not permit, nor does the panel have, any regard for the nominee's personal circumstances, such as financial hardship.

19. The fellowships are awarded annually, usually in or about September each year.

20. There are no conditions attached to how the cash grant is spent by the recipients.

21. The fellowships are not paid in relation to, or for any services or benefits provided by the recipients to any person or organisation, including the SMF and any entities associated with these entities.

22. The following documents, or relevant parts of them form part of and are to be read with the description:

- The 2015 Sidney Myer Creative Fellowship Nomination Form
- Extract from the Sidney Myer Fund & The Myer Foundation website – Arts & Humanities area titled 'Sidney Myer Creative Fellowships' <http://myerfoundation.org.au/grants/arts-humanities/smcf/>, and
- Extract from the Sidney Myer Fund & The Myer Foundation website – Arts & Humanities area titled 'FAQ' <http://myerfoundation.org.au/grants/arts-humanities/smcf/faq/>.

Ruling

23. The fellowships awarded by the SMF do not form part of the recipient's assessable income under either section 6-5, section 6-10 or section 15-2.

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.*

24. A payment or other benefit received by a taxpayer is included in 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

25. Subsection 6-5(1) provides that an amount is included in assessable income if it is income according to ordinary concepts (ordinary income).

26. 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. The courts have also established that consideration of the whole of the circumstances is necessary. The following factors are relevant in determining whether or not the fellowship is income according to ordinary concepts:

- how, in what capacity, and for what reason the recipient received the fellowship¹
- whether the fellowship is of a kind which is a common incident of the recipient's calling or occupation²
- whether the fellowship is made voluntarily
- whether the fellowship is solicited³
- whether the fellowship can be traced to gratitude engendered by some service rendered by the recipient to the SMF or related entities⁴

¹ *Squatting Investment Co Ltd v. Federal Commissioner of Taxation* (1953) 86 CLR 570; [1953] HCA 13; (1953) 5 AITR 496; (1953) 10 ATD 126 (*Squatting Investment Case*).

² *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; [1966] HCA 48; (1966) 10 AITR 367; (1966) 14 ATD 286 (*Scott's Case*).

³ *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; [1956] HCA 21; (1956) 6 AITR 248; (1956) 11 ATD 68 (*Hayes' Case*) and *Scott's Case*.

⁴ *Squatting Investment Case*.

- the motive of the SMF (though this factor is rarely decisive in itself)⁵, and
- whether the recipient relies on the fellowship for regular maintenance of themselves and any dependants.⁶

27. The fellowships are awarded to the recipients at the early to mid-point of their careers in recognition of their dedication to the generation and propagation of Australia's artistic and cultural reputation and in so doing have demonstrated outstanding talent and exceptional courage with respect to their artistic field or creative practice.

28. The recipients do not receive the fellowships in connection with any employment or services rendered. Further, the eligibility criteria make it clear that the fellowships are not awarded in recognition of the achievement of a task or milestone or the creation of a product.

29. The fellowships are made voluntarily by the SMF and the recipients are unable to nominate themselves.

30. The nominee's personal circumstances, such as whether they are suffering financial hardship, are not considered by the panel. As the fellowships are paid in addition to the recipients regular income it is accepted that the fellowships are not relied upon by the recipients for their regular maintenance.

31. The fellowship is not received because of, or in relation to, the recipient's employment. That is, it is not a common incident of the recipient's occupation, it is made voluntarily by the SMF, it is not solicited by the recipient and it cannot be traced to any services rendered by the recipient.

32. In view of all of these circumstances it is accepted that the fellowships are not ordinary income of the recipients and do not form part of the recipients' assessable income.

Statutory income

33. Section 6-10 includes in assessable income amounts that are not ordinary income. These amounts are statutory income. A list of the statutory income provisions can be found in section 10-5. That list includes a reference to 15-2.

34. Subsection 15-2(1) provides that:

Your assessable income includes 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 or services rendered by you ...

⁵ *Hayes' Case*.

⁶ *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 5 ATR 443; (1952) 10 ATD 82 and *Federal Commissioner of Taxation v. Blake* (1984) 75 FLR 315; (1984) 15 ATR 1006; 84 ATC 4661.

35. The main issue to consider with respect to subsection 15-2(1) is whether the fellowship grant is ‘...provided to you in respect of ...any employment of or services rendered...’. The fellowship is not a product of the recipient’s employment. Rather it is a reward for the recipient’s talent and courage in their relevant artistic field or creative practice. However, subsection 15-2(1) also includes in assessable income those allowances etc, which are paid in respect of services rendered.

36. The fellowship does not require any specific outcomes. There is no agreement or expectation that recipients provide or supply services to the SMF. Recipients are required to meet two criteria, outstanding talent and exceptional courage. These criteria do not amount to the rendering of services to the SMF. As such the fellowships are not assessable under section 15-2 because the payment is not provided to the recipients in respect of any employment or for services rendered by the recipient.

Appendix 2 – Detailed contents list

37. 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:

IT 2145; TR 2006/10; CR 2002/83;
CR 2007/31; CR 2011/92

Subject references:

- exempt income
- prizes and awards
- windfall gains

Legislative references:

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 15-2(1)
- TAA 1953

Case references:

- Federal Commissioner of Taxation v. Blake (1984) 75 FLR 315; 84 ATC 4661; (1984) 15 ATR 1006

- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; [1952] HCA 65; (1952) 5 AITR 443; (1952) 10 ATD 82
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47; [1956] HCA 21; (1956) 6 AITR 248; (1956) 11 ATD 68
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; [1966] HCA 48; (1966) 10 AITR 367; (1966) 14 ATD 286
- Squatting Investment Co Ltd v. Federal Commissioner of Taxation (1953) 86 CLR 570; [1953] HCA 13; (1953) 5 AITR 496; (1953) 10 ATD 126

Other references:

- <http://myerfoundation.org.au/grants/arts-humanities/smcf/>
- <http://myerfoundation.org.au/grants/arts-humanities/smcf/faq/>
- The 2015 Sidney Myer Creative Fellowship Nomination Form

ATO references

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