


Bains and Commissioner of Taxation -

Decision impact statement

Bains and Commissioner of Taxation

AAT citations:	[2023] AATA 2477
Venue:	Administrative Appeals Tribunal
Venue reference no:	2021/5828
AAT member name:	Senior Member Olding
Judgment date:	11 August 2023
Appeals on foot:	No
Decision outcome:	Unfavourable to the Commissioner

Impacted advice

 The ATO is reviewing the impact of this decision on related advice and guidance products.

- Fact sheet *Victorian taxi industry Fairness Fund payments*.
- Taxation Ruling TR 2006/3 *Income tax: government payments to industry to assist entities (including individuals) to continue, commence or cease business*

Summary

This Decision impact statement outlines the ATO's response to this case. The Tribunal has determined, based on the facts and circumstances of the case, that a payment received by the Applicant from the Victorian Tax Reform Fairness Fund is not income according to ordinary concepts.

All legislative references in this Decision impact statement are to the *Income Tax Assessment Act 1997*.

Unless otherwise indicated, all judgment paragraph references in this Decision impact statement are to the judgment of *Bains and Commissioner of Taxation [2023] AATA 2477*.

Brief summary of facts

In 2001, the Applicant and his wife entered the Victorian taxi industry when they acquired their first taxi licence at a cost of \$280,000. The licence was funded by a bank loan secured against their family home. The Applicant himself did not operate this taxi licence, but instead provided vehicles for other drivers to operate under this licence.

In 2006, the Applicant and his wife acquired their second taxi licence at a cost of \$385,000. This licence was also funded by another bank loan secured against their family home. This second taxi licence was operated by third-party drivers until 2013, when the Applicant commenced operating the licence (by driving the vehicle himself).

In 2010, the Applicant acquired a third taxi licence at a cost of \$180,000 funded by a further bank loan secured against the family home. The Applicant himself operated this taxi licence.

Between 2013 and 2017, the Victorian Government introduced a series of reforms affecting the taxi and hire car industry in Victoria. Due to the reforms, with effect from 1 July 2018, existing taxi licences were revoked and replaced with a new type of non-tradeable licence.

In recognition of the adverse effects of the reforms on industry participants, the Victorian Government introduced 3 types of financial assistance payments:

- (1) a Victorian Taxi Reform Hardship Fund payment
- (2) a Victorian Transition Assistance payment
- (3) a Victorian Taxi Reform Fairness Fund payment.

The Applicant applied for, and received, all 3 types of financial assistance payments. The appeal to the Tribunal only relates to the Victorian Taxi Reform Fairness Fund (Fund) payment.

The Applicant received notification of approval of the Fund payment by letter dated 25 February 2018 from the Department of Economic Development, Jobs, Transport and Resources. The letter provided no reasons for the decision relating to how the eligibility criteria was satisfied or how the amount of \$250,000 was calculated.

Relevantly, on 6 March 2018, the Applicant received a single lump sum payment of \$250,000 from the Fund. The Fund was established to provide financial relief to taxi licence holders who had experienced significant financial hardship as a consequence of the Victorian taxi industry reforms.

In about June 2018, the Applicant had exited the Victorian taxi industry.

The Commissioner considered the Fund payment of \$250,000 to be income according to ordinary concepts under section 6-5 and issued an amended assessment to the Applicant. The Applicant objected to this assessment and the objection was disallowed.

Issues decided by the Tribunal

The Tribunal considered whether the payment of \$250,000 received by the Applicant from the Fund was income according to ordinary concepts under section 6-5.

Eligibility for a payment

The Tribunal considered that an applicant's eligibility for a payment appeared to be assessed through an eligibility framework set by the Victorian Government comprising an asset test, an indebtedness test and a mortgage test.

The Tribunal concluded that the payment of \$250,000 aligns with the asset test and was calculated in accordance with the Applicant's income and indebtedness (at [28]).

The Tribunal noted that the eligibility framework was not strictly applied and 'there were a number of applications where judgement had to be applied based on the eligibility criteria principles and not just the financial assessment process' (at [31]).

The use of discretion and judgment, and the approval of applications that were outside the framework, was considered by the Tribunal to be consistent with the eligibility guidelines (at [31]).

Income according to ordinary concepts

The Tribunal drew upon principles in case law to establish whether the payment was income according to ordinary concepts.

Reliance was placed on *The Commissioner of Taxation of the Commonwealth of Australia v Harris, G.O.* [1980] FCA 74; (1980) 43 FLR 36 at [13], noting that in resolving the question of whether a payment is income according to ordinary concepts ‘turns on questions of emphasis and degree’. Relevant considerations from [14–16] in *The Commissioner of Taxation of the Commonwealth of Australia v Harris, G.O.* were applied by the Tribunal (at [33]).

Further, the Tribunal referred at [35] to the High Court decision in *Commissioner of Taxation (Cth) v Rowe* [1997] HCA 16 where the Court stated that the first question for a voluntary payment is to identify what it is for. In considering what the payment was for, the Tribunal noted the purpose of the Fund ‘was to provide relief for those “who [were] facing significant financial hardship as a result of the proposed reforms” (at [44]).

The Tribunal, in analysing whether the payment was income according to ordinary concepts at [49], [52] and [59], had regard to the following factors:

- the Fund payment was a one-off discretionary payment
- the Fund payment was designed to provide relief arising from the financial hardship suffered resulting from the Victorian taxi industry reforms
- the Fund payment was not a substitute for income forgone or future revenue that was lost.

After considering the above factors, the Tribunal held that the payment was not income according to ordinary concepts (at [61]).

ATO view of decision

The Commissioner accepts the Tribunal’s decision that payments from the Fund are not income according to ordinary concepts and will administer the law in accordance with the Tribunal’s decision.

The Tribunal did not consider payments from the Victorian Taxi Reform Hardship Fund or the Victorian Transition Assistance payments. The Tribunal also did not consider other payments made as a result of the taxi industry reforms in the other Australian States.

The Commissioner considers that the decision does not impact the ATO’s position on the other types of financial assistance payments made to Victorian taxi licence holders.

The Commissioner acknowledges that there are entities who might be impacted by the Tribunal’s decision and is currently identifying those taxpayers. The Commissioner will provide remediation pathways to these entities as a matter of importance.

Further information about the steps being taken by the Commissioner and what you need to do if you or your entity has been impacted, will be published in due course at: [Taxi licence holders – industry assistance payments and passenger movement levies](#).

Implications for impacted advice or guidance

The ATO is reviewing the impact of this decision, if any, on related advice and guidance products, including:

- Fact sheet *Victorian taxi industry Fairness Fund payments*
- Taxation Ruling TR 2006/3 *Income tax: government payments to industry to assist entities (including individuals) to continue, commence or cease business*

Comments

We invite you to advise us if you feel this decision has consequences we have not identified. Please forward your comments to the contact officer.

Date issued: 1 November 2023

Due date: 1 December 2023

Contact officer details have been removed as the comments period has expired.

Legislative references

ITAA 1997 6-5

Case references

The Commissioner of Taxation of the Commonwealth of Australia v Harris, G.O.
[1980] FCA 74; (1980) 43 FLR 36; 80 ATC 4238; 10 ATR 869; 30 ALR 10

Commissioner of Taxation (Cth) v Rowe [1997] HCA 16; 187 CLR 266; 97 ATC 4317;
35 ATR 432; 143 ALR 406

ATO references

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