



Class Ruling

Income tax: allowances received by attendees at Centrelink reference group meetings

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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 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 8-1 of the ITAA 1997; and
- Section 900-50 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 comprises attendees of reference group meetings held by the Commonwealth Services Delivery Agency (Centrelink) who receive a meal and incidentals allowance in relation to travel to attend a reference group meeting.

4. The attendees are:

- representatives of peak bodies who attend in their capacity as employees of these organisations; and
- volunteer attendees, who are either:
 - Centrelink customers (that is, benefit recipients); or
 - representatives of community organisations who are not employees of their organisations and who do not carry on a business of providing consultation services.

Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. 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 10 to 22 of this Ruling.

7. 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

9. This Ruling applies from 1 July 2007 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).

Scheme

10. The scheme that is the subject of the Ruling is described below. This description is based on the Application for Class Ruling dated 30 August 2007. This document forms part of, and is to be read with, this description.

11. As described in its Annual Report 2005-06, Centrelink has established a number of community reference groups nationally to gather input on and feedback about Centrelink's service delivery. The reference groups address service delivery issues relevant to, for example, older persons, those with mental health or disability issues and those from diverse language and cultural backgrounds.

12. The reference groups meet as the need arises, usually two or more times a year. They comprise representatives from peak community and service delivery bodies and may include Centrelink customers.

13. Attendees are invited to meetings depending on the relevance of the subject matter to them or their organisation. They are expected to contribute to discussions, provide feedback and assist with the resolution of issues but are not expected to undertake duties outside of the meetings.

14. Attendance is voluntary and Centrelink does not pay anything to attendees, or the organisations they represent, for the services they provide to Centrelink by attending the meetings.

15. Centrelink reference group meetings are normally held in Canberra but may, where more appropriate, be held in other places.

16. While an effort is made to invite sufficient contributors from the local area, sometimes Centrelink finds it necessary to invite people from other localities. These individuals may travel hundreds of kilometres to participate and may be required to stay overnight away from their usual place of residence.

17. Centrelink pays all travel and accommodation costs incurred by attendees who travel away from their ordinary residence. Payment is usually made direct to the third party provider. In no circumstances do the attendees receive money to pay for accommodation or travel.

18. Centrelink also pays a meal and incidentals allowance to attendees who travel away from their ordinary residence to cover the cost of meals consumed whilst travelling, and other incidental expenses. The travel does not have to involve an overnight stay away from their ordinary residence.

19. The allowance is paid by reference to the relevant rates for allowances that apply to Centrelink employees and is in accordance with the reasonable travel allowance rates for meals and incidental expenses as determined and published annually by the Commissioner of Taxation.¹

20. Attendees who receive the allowance are not required to provide evidence of expenditure to Centrelink, nor are they required to refund any unspent portion.

21. The payment of the allowance is not covered by any provision in the *Social Security Act 1991*.

22. Centrelink normally provides food and drink for attendees at the meetings. Where Centrelink provides a meal to attendees, no allowance is provided in respect of that meal.

Ruling

Income

23. The allowance payments to representatives of peak bodies who attend the meetings in their capacity as employees of their organisations are assessable as ordinary income under section 6-5.

24. The allowance payments made to volunteer attendees are not assessable as ordinary income under section 6-5 or as statutory income under section 6-10.

Deductions

25. Expenses incurred in relation to meals and work-related incidental expenses by employee representatives of peak bodies who travel away from their ordinary residence overnight are deductible under section 8-1.

26. Expenses incurred in relation to work-related incidentals by employee representatives of peak bodies who do not travel away from their ordinary residence overnight are deductible under section 8-1. However, meal expenses incurred in conjunction with part-day travel are a private expense and are not deductible.

¹ See Taxation Ruling TR 2004/6; rates for the 2007-08 income year are set out in Taxation Determination TD 2007/21, for the 2008-09 income year in Taxation Determination TD 2008/18, and for the 2009-10 income year in Taxation Determination TD 2009/15.

27. Expenses incurred by volunteer attendees in relation to items covered by the allowance are not deductible under section 8-1.

Substantiation

28. The substantiation exception in section 900-50 does not apply to attendees. They are required to substantiate any claims for expenditure covered by the allowance.

Commissioner of Taxation24 February 2010

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.*

29. 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

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

31. 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.

32. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*,² 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.

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

² (1990) 170 CLR 124 at 138; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

³ *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

⁴ *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).

34. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁵ The whole of the circumstances must be considered⁶ and the motive of the payer may be relevant to this consideration.⁷

Employee representatives of peak bodies

35. The employee representatives of peak bodies attend the reference group meetings in their capacity as employees of those peak bodies. As attendance is part of the person's duties as an employee, the allowance is assessable as ordinary income under section 6-5 as a product of that employment.

36. It does not matter that the allowance is paid by someone other than the person's employer.⁸

Volunteer attendees

37. The volunteer attendees are not Centrelink employees and do not carry on a business of providing consultation services.

38. Only attendees who travel away from their ordinary residence overnight or for an extended period on the day of the meeting receive the allowance. Other attendees, who also provide the same service to Centrelink, do not receive an allowance. Centrelink expressly states that the allowance is not paid as consideration for services received and the quantum of the allowance is consistent with its express purpose of covering reasonable out-of-pocket expenses for meals consumed whilst travelling. The allowance as such is inconsistent with being paid as consideration for time spent or expertise offered. In these circumstances it is considered that the allowance is not a product of the services rendered.

39. The allowance is a one-off payment per attendance. The volunteer attendees who receive it do not depend on it for their ordinary expenditure. It is not something that they can expect to receive, as their attendance is dependent on Centrelink's invitation to participate and meetings are held on a needs basis.

⁵ *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.

⁶ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627-628 per Kitto J.

⁷ *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.

⁸ *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 556 per Dixon CJ and Williams J.

40. In summary, the allowance is:

- not a product of employment, a business or services rendered by the recipient;
- not connected to the regular income-producing activities of the recipient;
- not periodical, regular or recurrent;
- not relied upon by the recipient for their regular maintenance; and
- not paid by Centrelink as a reward for services but to cover the reasonable out-of-pocket expenses of the recipient.

41. In the circumstances it is considered that the allowance is not ordinary income of the volunteer attendees.

Statutory income

42. A list of the statutory income provisions can be found in section 10-5. That list includes a reference to section 15-2.

43. Subsection 15-2(1) provides that 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 of or services rendered by you ...

The subsection is the current equivalent of the now repealed paragraph 26(e) of the *Income Tax Assessment Act* (ITAA 1936), and for present purposes is not materially different from the former provision.

44. Section 15-2 can apply where services are rendered even though there is no employer-employee relationship. It may also apply where the allowance et cetera is paid voluntarily.

45. In considering the situation where services are rendered outside of an employment relationship, the Full Federal Court in *Federal Commissioner of Taxation v. Holmes* (1995) 58 FCR 151 stated (at 154-155):

The words of the section are broad indeed, although not without limit, cf *Federal Commissioner of Taxation v. Dixon* (1952) 10 ATD 82; (1952) 86 CLR 540. They exclude, for example, a payment which is received by the recipient as a mere gift: *Scott v. F C of T* (1966) 117 CLR 514. To fall within s 26(e) there must be 'a real relation between the receipt and... services': *Hayes v. Federal Commissioner of Taxation* (1956) 11 ATD 68 at 72; (1956) 96 CLR 47 at 54. Or, as Fullagar J put it in *F C of T v. Dixon* (supra at ATD 90; CLR 564) the payment must have the 'character of a reward for services rendered or to be rendered'.

46. *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513 concerned a payment within an ongoing employment relationship. However, members of the High Court commented on the more general application of paragraph 26(e) of the ITAA 1936. Wilson J, having referred to the judgments in *Dixon*⁹ and *Hayes*,¹⁰ stated that, in relation to services rendered apart from employment, paragraph 26(e) of the ITAA 1936 applied only where the payment was, directly or indirectly, a reward for services rendered or to be rendered.¹¹ Gaudron J, with whom Deane J agreed, expressed the same view.¹²

47. Where services are rendered outside an employment relationship, an amount will be assessable under section 15-2 if there is a 'real relation' between the payment and the services rendered in the sense of that the payment is a reward for those services. In order to determine if such a relationship exists so that subsection 15-2(1) makes an allowance et cetera assessable, 'the total situation of the taxpayer' has to be considered.¹³ The reason why a payment is made is relevant to this consideration, and motive may be evidence of this.¹⁴

Volunteer attendees

48. In the present circumstances the allowance paid to volunteer attendees:

- is an incident of a personal pursuit of a non-commercial nature rather than an incident of an income-producing activity; and
- for the reasons given in paragraph 38 of this Ruling, does not have the character of a reward or remuneration for the services the volunteer attendee provides to Centrelink by attending and contributing at the reference group meeting.

49. In these circumstances, for the purposes of section 15-2, there is no 'real relation' between the allowance and the services rendered by the attendee and the allowance is therefore not assessable under that provision.

50. As there is no other provision under which the voluntarily paid allowance is assessable as income, the allowance is not assessable as statutory income under section 6-10.

⁹ *Federal Commissioner of Taxation v. Dixon* (1952) 10 ATD 82; (1952) 86 CLR 540.

¹⁰ *Hayes v. Federal Commissioner of Taxation* (1956) 11 ATD 68 at 72; (1956) 96 CLR 47.

¹¹ *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513 at 519.

¹² *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513 at 536.

¹³ *Federal Commissioner of Taxation v. Dixon* (1952) 10 ATD 82, per Dixon CJ and Williams J at 84-85; (1952) 86 CLR 540 at 555.

¹⁴ *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513 at 524.

Deductibility of expenses

Representatives of peak bodies

51. To be deductible under section 8-1, an outgoing or loss must be incurred in gaining or producing your assessable income and not be an outgoing or loss that is capital, of a capital nature, or of a private or domestic nature.

52. As a general rule, expenditure on meals is private and therefore not deductible. In *Federal Commissioner of Taxation v. Cooper* (1991) 29 FCR 177, Hill J stated (at 201):

Food and drink are ordinarily private matters, and the essential character of expenditure on food and drink will ordinarily be private rather than having the character of a working or business expense. However, the occasion of the outgoing may operate to give to expenditure on food and drink the essential character of a working expense in cases such as those illustrated of work-related entertainment or expenditure incurred while away from home.

53. In the Commissioner's view, for meal expenses to have an employment-related character they have to be incurred in conjunction with travel away from home overnight. In Taxation Ruling TR 2004/6, the Commissioner defines 'travel away from the employee's ordinary residence' as requiring an overnight stay (paragraph 89). In the absence of an overnight stay, a meal expense lacks the characteristics of a working expense.¹⁵

54. Incidental work-related expenses incurred by the employee representative, such as car parking fees at the meeting venue, are deductible irrespective of whether the employee representative travels away from their ordinary residence overnight to attend the meeting.

Substantiation

55. Attendees who attend reference group meetings in their capacity as employees of a peak body are required to substantiate their claims for deductions in full, as the exception in section 900-50 will not apply to them. This is because the expenses they incur are not 'travel allowance expenses' as defined in subsection 900-30(2). A 'travel allowance expense' is defined in the subsection as 'a loss or outgoing you incur for travel that is covered by a *travel allowance'. A 'travel allowance' is defined in subsection 900-30(3) as 'an allowance your employer pays or is to pay to you ...'. As the attendees are not employees of the payer (Centrelink), the allowance is not a 'travel allowance' for Division 900 purposes and the expenses are not 'travel allowance expenses'.

¹⁵ Taxation Ruling TR 98/9, paragraph 24. See also Taxation Ruling TR 98/6, paragraphs 23, 203; Taxation Ruling TR 98/14, paragraphs 22, 177; Taxation Ruling TR 1999/10, paragraph 29.

56. Because the expenses incurred by attendees are not 'travel allowance expenses', the substantiation exception in section 900-50 cannot apply.

Volunteer attendees

57. The volunteer attendees' attendance at the meetings is not something they do in the course of gaining or producing their assessable income. Therefore any expenses incurred personally by them are not incurred in gaining or producing their assessable income and are not deductible under section 8-1.

Appendix 2 – Detailed contents list

58. 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 98/9; TR 98/6; TR 98/14;
TR 98/6; TR 1999/10;
TR 2004/6; TR 2006/10;
TD 2007/21; TD 2008/18;
TD 2009/15

Subject references:

- domestic travel expenses
- travel allowances
- work related expenses

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 15-2(1)
- ITAA 1997 Div 900
- ITAA 1997 900-30(2)
- ITAA 1997 900-30(3)
- ITAA 1997 900-50
- ITAA 1936 26(e)
- Social Security Act 1991
- TAA 1953
- 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. Cooper (1991) 29 FCR 177; 91 ATC 4396; (1991) 21 ATR 1616
- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540
- Federal Commissioner of Taxation v. Holmes (1995) 58 FCR 151; 95 ATC 4476; (1995) 31 ATR 71
- 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] HCA 25; (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47; (1956) 11 ATD 68
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; (1966) 14 ATD 286
- Smith v. Federal Commissioner of Taxation [1987] HCA 48; (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274
- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570

Other references:

- Centrelink Annual Report 2005-06

ATO references

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