



Class Ruling

Income tax: Department of Health (Commonwealth) – Direct Funding Model of the Individual Support Packages sub-Programme of the Commonwealth Continuity of Support Programme

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This publication provides you with the following level of protection:

This publication (excluding appendices) 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.

Summary – 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
- 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 is:
- individuals who enter into an agreement to receive direct payments through the Direct Funding model of the Individual Support Packages (ISP) sub-programme of the Commonwealth Continuity of Support (CoS) Programme who were formerly receiving individualised budgets under State administered arrangements prior to transitioning to the CoS Programme
 - a legal representative or any appointed nominee of such an individual.

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 8 to 29 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 May 2017 to 31 December 2020. 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

8. 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 30 January 2017
- Commonwealth Continuity of Support (CoS) Programme Individual Support Packages – Direct Funding Model – Service Agreement
- Spreadsheet entitled Legislation for Individual Support Packages – SA, VIC, NT, NSW
- Commonwealth CoS Programme Manual (the Manual) available on the [Department of Health website](#).
- Commonwealth CoS Client Handbook (the Handbook) available on the [Department of Health website](#).

Background

9. The new CoS Programme has been developed to ensure continued support for people aged 65 years and over and Indigenous people aged 50 years and over who are not eligible for support under the *National Disability Insurance Scheme (NDIS) Act 2013*. The objective of the Programme is supporting clients to achieve similar outcomes to those they were achieving under the former State based Programmes prior to transitioning to the new arrangements.

10. Schedule 1AB of the *Financial Framework (Supplementary Powers) Regulations 1997* is the legislative authority for the ISP payments.

11. The CoS Programme will provide funding through two sub-Programmes – Block-funded sub-Programme and the Individual Support Packages (ISP) sub-Programme. Under the ISP sub-Programme, there are 3 models:

- Service provider model
- Intermediary model
- Direct Funding model

12. Implementation of the CoS Programme will be staged and commenced from 1 December 2016, with nationwide implementation to occur by 30 June 2020. This Class Ruling relates only to the Direct Funding ISP model identified below that commences on 1 May 2017.

13. Where clients were receiving direct payments from State or Territory governments these clients will be transitioned to the Direct Funding model under the CoS Programme.

14. To receive direct payment from CoS Programme Direct Funding Recipient a person with a disability or their legal representative must enter into a Commonwealth Continuity of Support (CoS) Programme Individual Support Packages Direct Funding Model Service Agreement (the Agreement). The Commonwealth CoS Programme Manual forms part of the Agreement between the Commonwealth and Grant Recipient. A person who enters into an Agreement with the CoS Programme Direct Funding Grant Recipient is hereafter referred to as a participant.

15. The Manual states the following elements should be included in the Agreement:

- client goals and outcomes
- roles and responsibilities of the client and the Grant Recipient
- the level of responsibility the client wishes to have (e.g. who will hold responsibility for employment of workers)
- planned supports and services to meet those goals and outcomes and who will deliver these and how, and
- costs of the supports and services including management of any additional charges.

16. Under the Direct Funding model, a national CoS Direct Funding Grant Recipient selected by the Commonwealth will dispense ISP funding to the client's nominated bank account. The client (or nominee) will have control of managing their budget and purchasing services or supports to meet their needs.

17. ISP funding can only be used to access supports and services that are directly related to the client's support needs and to achieve the goals identified in their Agreement. Broadly, disability supports and services that can be purchased may include (but are not limited to) supported accommodation, community support, community access and respite. Guidance on the appropriate use of CoS ISP funding is included in the Manual.

18. A participant will be responsible for:

- Choosing and arranging their support and services
- Checking the quality of the support they receive
- Checking the invoices from service providers are correct
- Paying the invoices and keeping receipts
- Providing reports to Direct Funding Grant Recipient.

Assigning a nominee

19. The Agreement must be developed and must be agreed between the participant and the Direct Funding Grant Recipient. To enter an Agreement, the participant must be able to understand their rights and responsibilities or have a nominee or representative to act on their behalf.

20. The Agreement gives the participant choice and control over how individualised funding is spent, the support received and who delivers the support.

21. A person acting as nominee will be responsible for managing the direct payments of the participant and must comply with the responsibilities set out in the Manual and Handbook.

Bank account

22. The Direct Funding Grant Recipient will transfer funds directly to the participant's nominated bank account. The participant must have a separate bank account, with the characteristics described in the Agreement, to receive the direct payments. The participant cannot make 'top up' contributions to this account from the participant's personal funds to purchase support.

23. Any interest earned in the bank account becomes part of the participant's funds, which can be used to buy support.

24. The bank account can only be closed when you exit from the Direct Funding Programme and only after the participant has paid any outstanding invoices for supports and services, provided satisfactory evidence has been supplied to the Direct Funding Grant Recipient of the participant's use of the ISP funding.

Work health and safety

25. The participant must fulfil the participant's work health and safety obligations as described in the Agreement. These obligations apply whether the participant engages service providers, employs people directly or receives assistance from volunteers.

Paying family members

26. The participant cannot use the direct payments to employ, contract or pay family members to provide the support and services, except after receiving the express written approval of the Department of Health (through the Direct Funding Grant Recipient) to do so.

Reporting

27. The participant must keep, or engage a person to keep, detailed records of how the direct payments are used. These records must be provided to the Direct Funding Grant Recipient at the times and in the format specified by the Direct Funding Grant Recipient in the Agreement. The Direct Funding Grant Recipient will retain all reports and records it creates for the purposes of the Agreement for a period of seven years.

Unspent funds

28. If the participant decides, or the Direct Funding Grant Recipient, to end the Agreement before the end of the financial year, the participant must return any unspent funds to the Direct Funding Grant Recipient. The participant must repay to the Direct Funding Grant Recipient any unspent funds remaining after the end of the financial year, unless the Direct Funding Grant Recipient agrees prior to 31 July to offset that amount against one or more future ISP funding payments in the next financial year under the Agreement.

Contractual relationship

29. The Agreement creates a contractual relationship between the Direct Funding Grant Recipient and the participant, or nominee on behalf of the participant. The arrangements between the participant and the people or organisations that the participant employ or engage using direct payments paid to the participant are completely independent of the Direct Funding Grant Recipient and the Department of Health.

Ruling

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

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

32. The payments received under the Agreement 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.

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

34. For relevant medical expenses which are met from payments under the Agreement, the rebateable amount for the purposes of the medical expenses tax offset in section 159P of the ITAA 1936 will be nil.

Commissioner of Taxation

12 April 2017

Appendix 1 – Explanation

❗ 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.

35. 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

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

37. 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
- whether the payment received is income is an objective test.

38. 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
- the motive of the person making the payment. Motive however, is rarely decisive as in many cases a mixture of motives may exist.

39. A participant does not receive payments under the Agreement as an employee of the Direct Funding Grant Recipient or the Department of Health or in relation to the carrying on of a business. Therefore, the payments are not the product of any employment or any business.

40. However, whether the payments under the Agreement 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.

41. Under 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 to be used only for purchasing care, support or assistance the participant may need and meeting the direct costs of managing support as set out in their Agreement.

42. The participant must account for the use of the payments and at the end of the financial year, a participant is required to repay to Direct Funding Grant Recipient any unspent payments.

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

44. With respect to the character of payments received under the Agreement, 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.

45. 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 Agreement in the hands of the participants do not have the character of income.

46. As to the form of payments under the Agreement, there is an element of periodicity in the receipt of the payments. 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.

47. With respect to motive, a primary motive of the Department of Health and the Direct Funding Grant Recipient in providing an Individual Support Package 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.

48. 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

49. 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

50. 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 ...

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

Assessable recoupment

52. 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 Agreement 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.

53. As the payments under the Agreement 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 33 of this Ruling), the payments under the Agreement are not assessable recoupments and therefore, no amounts are included in participants' assessable income under Subdivision 20-A.

Interest earned

54. 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.

55. In the present case, however, any bank interest accrued on payments under the Agreement, deposited in a separate bank account, forms part of the payments and, for the reasons referred to in paragraphs 36 to 48 of this Ruling with respect to the payments themselves, is not ordinary income.

56. As there is no provision listed in section 10-5 which includes bank interest as statutory income (see paragraph 50 of this Ruling), bank interest accruing to payments under the Agreement in a participant's bank account is not statutory income of the participant.

General deductions

57. As the payments under the Agreement 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 these goods and services are not deductible.

Medical expenses tax offset

58. 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 rebateable amount for the purposes of the medical expenses tax offset.

59. Eligible medical expenses are restricted to payments for disability aids, attendant care or aged care.

60. Some or all of the expenses of the participants incurred for the acquisition of goods or services under the Agreement 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 rebateable amount. For relevant medical expenses which are fully met from payments under the Agreement, the rebateable amount for the purpose of the medical expenses tax offset will be nil.

Note: The NMETO is being phased out and will cease on 30 June 2019.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

- ITAA 1997 Subdiv 20-A
- ITAA 1997 20-20(3)
- ITAA 1997 20-30
- TAA 1953

Related Rulings/Determinations:

TR 2006/10; CR 2009/17;
CR 2009/50; CR 2013/45;
CR 2013/16; CR 2014/20

Case references:

- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; (1952) 26 ALJ 505; (1952) 10 ATD 82; [1953] ALR 17; [1952] HCA 65
- Federal Commissioner of Taxation v. Rowe (1997) 187 CLR 266; (1997) 71 ALJR 624; (1997) 35 ATR 432; (1997) 143 ALR 406; (1997) 97 ATC 4317; [1997] HCA 16

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

ATO references

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