



CR 2005/17 - Income tax: assessable income: Worker Assistance Program to assist recipients to commence a business - Western Australian Timber Industry Assistance Program

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2001*



Class Ruling

Income tax: assessable income: Worker Assistance Program to assist recipients to commence a business – Western Australian Timber Industry Assistance Program

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
 - subsection 6-5(1) of the ITAA 1997;
 - section 6-10 of the ITAA 1997;
 - subsection 6-10(3) of the ITAA 1997;
 - section 8-1 of the ITAA 1997;
 - section 15-10 of the ITAA 1997;
 - subsection 20-20(3) of the ITAA 1997;
 - section 20-40 of the ITAA 1997;
 - Part 3-1 of the ITAA 1997;
 - section 104-25 of the ITAA 1997;
 - section 108-5 of the ITAA 1997;

- subsection 109-5(2) of the ITAA 1997;
- Division 110 of the ITAA 1997;
- Division 112 of the ITAA 1997;
- paragraph 26(g) of the *Income Tax Assessment Act 1936* (ITAA 1936); and
- subsection 27A(1) of the ITAA 1936.

Class of persons

3. The class of persons to which this Ruling applies is recipients of financial assistance under the Worker Assistance Program (WAP), in respect of the Western Australian Timber Industry Assistance Program, who receive funds approved for the purpose of assisting to commence a business.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 10 to 17.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement 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 July 2001. However, this Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20).

Withdrawal

9. This Ruling is withdrawn from 30 June 2008.

Arrangement

10. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for a Class Ruling from the Western Australian Department of Education and Training dated 20 July 2003;
- Western Australian – Worker Assistance Program Guidelines dated 17 July 2001;
- Labor Party, Protecting Our Old-Growth Forests policy;
- Government of Western Australia media statement dated 1 June 2001, announcing the expanded assistance for timber workers and indicative timber yields; and
- Advice from the Western Australian Department of Education and Training as follows:
 - Letter received via tax agent dated 5 November 2003;
 - E-mail dated 18 March 2003 contained in letter from tax agent dated 23 March 2003;
 - E-mail dated 10 May 2004 received via tax agent; and
 - E-mail dated 25 August 2004.

11. In May 1999 the Commonwealth of Australia and the State of Western Australia ('the State') agreed to a Regional Forest Agreement which established a framework for the management of the native hardwood timber forests of the South-West Region of Western Australia.

12. The State announced a Western Australian Timber Industry Assistance Program, one component of which is the WAP which aims to assist displaced timber workers to find new, secure jobs.

13. The Western Australian Department of Education and Training is responsible for the WAP and the program itself is overseen by the WAP Advisory Committee (the Advisory Committee) composed of industry and community stakeholders and relevant Government Departments.

14. WAP assistance is available for extraordinary purposes once approved by the Advisory Committee. Under the parameters associated with the WAP assistance for 'extraordinary purposes' will include, funding of up to \$10,000 which may be provided to eligible workers who are endeavouring to start their own business or develop an existing business.

15. The amount of funding available to the applicants for WAP funding and the purpose of the funding is summarised in the table below:

Amount of WAP funding	Recipient	Purpose of funds	Requirements to receive funds
Up to \$500	All applicants.	To fund business commencement costs including preparation of business plan and market research.	Applicant must attend a business supporting agency for business commencement assistance.
Balance of funds up to \$3,000 total	Applicants whose business is not intended to replace their full time job but will supplement their income.	To assist in the commencement of their business, for example, in purchasing plant and equipment required to operate the business.	The applicant must get approval from the Advisory Committee. The Advisory Committee only approves funding where the Advisory Committee considers the business activity will supplement the applicant's income.
Balance of funds up to \$10,000 total	Applicants whose business is intended to replace their full time job.	To assist in the commencement of their business, for example, in purchasing plant and equipment required to operate the business.	The business supporting agency must notify the applicant and the Western Australian Department of Education and Training in writing, whether or not, in the business supporting agency's opinion, the applicant's business proposal is likely to be viable.

16. The payments are received by the applicant either as a reimbursement upon the presentation of relevant receipts or payment is made directly to suppliers of goods and services on behalf of the eligible applicant.

17. An application for WAP assistance has to be lodged with the Western Australian Department of Education and Training on or before 30 June 2004 (other than those workers awaiting retrenchment as at 30 June 2004 and registered on the WAP eligibility quarantine list).

Ruling

18. Amounts paid under the WAP for commencing a business are capital in nature and not assessable income under section 6-5 of the ITAA 1997.

19. In addition, these amounts are not received in relation to the carrying on of a business and so are not assessable under section 15-10 of the ITAA 1997.

20. Amounts paid under the WAP are subject to the capital gains tax (CGT) provisions in Part 3-1 of the ITAA 1997.

21. Amounts paid under the WAP in respect of depreciating assets for which deductions for decline in value are allowable under Division 40 of the ITAA 1997 are assessable income under the assessable recoupment provisions in Subdivision 20-A of the ITAA 1997. The amount may be included over more than one income year, limited to the amount that can be deducted under Division 40.

22. Amounts paid under the WAP are not eligible termination payments under subsection 27A(1) of the ITAA 1936.

Explanation

23. A payment or other benefit received by a taxpayer is included in assessable income if:

- it is income according to ordinary concepts (ordinary income) (section 6-5 of the ITAA 1997); or
- it is not ordinary income but is included in assessable income by provisions about assessable income (statutory income) (section 6-10). The relevant provision about assessable income in this Ruling is section 15-10 of the ITAA 1997.

Ordinary income

24. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included in assessable income if it is income according to ordinary concepts (ordinary income). However, as there is no definition of 'ordinary income' in income tax legislation it is necessary to turn to the decisions of the courts.

25. In *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 40 ALJR 205; [1967] ALR 561; (1966) 14 ATD 286 Windeyer J stated:

Whether or not a particular receipt is income depends upon its quality in the hands of the recipient.

26. In *G.P. International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; (1990) 64 ALJR 392; (1990) 93 ALR 193; (1990) 90 ATC 4413; (1990) 21 ATR 1 the High Court considered the following factors were important in determining the nature of a receipt:

To determine whether a receipt is of an income or 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.

27. The applicants receive WAP funding for the purpose of assisting with the cost of establishing a new business. The payments are in relation to establishing the capital structure of the new business. As such, the payments in the hands of the taxpayer are of a capital nature.

28. Therefore, the amounts the applicants receive from the WAP in relation to the commencement of a business are not income according to ordinary concepts for the purposes of section 6-5 of the ITAA 1997.

Statutory income

Bounty or subsidy

29. Section 15-10 of the ITAA 1997 includes in assessable income bounties and subsidies that are received in relation to carrying on a business and that are otherwise not assessable as ordinary income under section 6-5 of the ITAA 1997.

30. As stated in paragraph 28 it is considered that the amount received by the applicants to assist in establishing or commencing a business is not income according to ordinary concepts.

31. In some cases the WAP funding will be paid to the supplier of goods or services and not directly to the WAP applicant. However, in accordance with subsection 6-10(3) of the ITAA 1997 the amount becomes statutory income as soon as it is applied or dealt with in any way on behalf of or as directed by the WAP applicant.

32. The word 'subsidy', as noted by Windeyer J in *Placer Development Ltd v. Commonwealth of Australia* (1969) 121 CLR 353; [1969] ALR 801 derives from the Latin subsidium meaning 'an aid or help'. The Macquarie Dictionary, 3rd edn, defines subsidy as including a grant or contribution of money. It is considered that the amount received by the workers to assist in establishing or developing a business is a subsidy within the meaning of section 15-10 of the ITAA 1997.

33. The issue is then whether the subsidy has been received in relation to carrying on a business. In *First Provincial Building Society v. FCT* (1995) 56 FCR 320; 95 ATC 4145; 30 ATR 207 Hill J considered the meaning of the words 'received in relation to carrying on a business' as contained in paragraph 26(g) of the ITAA 1936 (which was rewritten as section 15-10 of the ITAA 1997). He said:

Under either limb, the relationship must be to the 'carrying on' of the business. These words may perhaps be understood in opposition to a relationship with the actual business itself. They would make it clear, for example, that a bounty received, merely in relation to the commencement of a business or the cessation of the business, would not be caught. The expression 'carrying on of the business' looks, in my opinion, to the activities of that business which are directed towards the gaining or producing of assessable income, rather than merely to the business itself.

34. WAP applicants who receive funding to commence a business do not receive the funding 'in relation to' the carrying on of a business but rather in relation to the establishment of the business. Therefore, the WAP funding to allow applicants to commence business does not fall within section 15-10 of the ITAA 1997.

Capital Gains Tax

35. An applicant will become entitled to WAP funding when all the conditions set out by the Advisory Committee have been met and the applicant has paid or incurred an amount of expenditure and has submitted a claim to the Advisory Committee.

Funding relates to ending of a right for assistance

36. Each time an applicant pays an amount or incurs expenditure that does not involve the acquisition of a CGT asset, and submits a claim to the Advisory Committee, they will acquire a contractual right to receive reimbursement of the expense incurred or to have the expense paid on their behalf. A contractual right is a CGT asset under section 108-5 of the ITAA 1997. The acquisition rules in subsection 109-5(2) of the ITAA 1997 apply to the applicant.

37. Each time a reimbursement is made directly to the applicant, and/or paid directly to the supplier on the applicant's behalf, the applicant's right to receive that amount or have that amount paid on their behalf will end. CGT event C2 under section 104-25 of the ITAA 1997 will happen on the satisfaction of that right when the Advisory Committee reimburses the applicant's expense or pays the expense on the applicant's behalf.

38. Under subsection 104-25(3) of the ITAA 1997, a capital gain is made if the capital proceeds exceed the cost base of the right, and a capital loss is made if the capital proceeds are less than the reduced cost base.

39. The cost base of the applicant's right will be calculated under Divisions 110 and 112 of the ITAA 1997 and will include the costs to the applicant of complying with the WAP's requirements, that is, the expenditure paid or incurred. The cost base of the right to receive reimbursement or have the expense paid on their behalf is reduced by any amount that is a deductible expense (for example, subsections 110-45(1B) and (2) of the ITAA 1997).

Funding relates to the acquisition of a CGT asset

40. Where an applicant pays an amount or incurs expenditure that involves the acquisition of a CGT asset and submits an invoice to the Advisory Committee, there will be CGT consequences when the cost of the asset is reimbursed or paid on behalf of the applicant by the Advisory Committee.

41. The reimbursement that the applicant receives or the payment that is made on the applicant's behalf is a recoupment of the cost of the CGT asset. The cost base of a CGT asset will be reduced under subsection 110-45(3) of the ITAA 1997 by the amount of the recoupment. However, if the recoupment is an assessable recoupment under the provisions in Subdivision 20-A of the ITAA 1997, the cost base of the asset is not reduced. See paragraphs 42 to 46 for an explanation of an assessable recoupment.

Assessable recoupment

42. In some situations the payment of WAP funds will be in the form of a reimbursement, to the applicant, of an expense incurred in purchasing depreciating assets to be used in operating a business. In other situations payments will be made to suppliers of depreciating assets, on behalf of the applicant. In both cases there will be a recoupment of a loss or outgoing for the purposes of section 20-25 of the ITAA 1997. An amount a taxpayer has received is an assessable recoupment under Subdivision 20-A of the ITAA 1997 if:

- it is not income under ordinary concepts or otherwise assessable;

- it is received as recoupment of a loss or outgoing (including by way of insurance or indemnity); and
- the taxpayer can deduct an amount for the loss or outgoing in the current year or an earlier year.

43. Under subsection 20-20(3) of the ITAA 1997 a recoupment, other than by way of insurance or indemnity, is an assessable recoupment if a deduction is allowable for the expense under a provision listed in section 20-30. Deductions for capital allowances under Division 40 of the ITAA 1997 are included in the list of provisions in that section.

44. The WAP funding an applicant receives is used to establish the profit yielding structure of a business. Therefore the expenditure is capital in nature and no deduction is allowable under section 8-1 of the ITAA 1997. However, where some of the funding is used to purchase a depreciating asset used in the business, the applicant will be entitled to a deduction for the decline in value of the depreciating asset under Division 40 of the ITAA 1997. The amount of the deduction is worked out by reference to the cost and effective life of the asset. The deduction is reduced by the extent that the use of the asset is not for a taxable purpose.

45. Section 20-35 of the ITAA 1997 provides that the payment is included in assessable income if the whole amount of the loss or outgoing can be deducted for the current year or in an earlier income year. The total amount assessed cannot exceed the amount of the loss or outgoing. If the recoupment is received before the income year of the deduction then the assessable recoupment is included in the year in which the loss or outgoing is deductible.

46. Where the loss or outgoing is deductible over two or more income years, section 20-40 of the ITAA 1997 provides that the total of assessable recoupments to be included in assessable income is limited to the total amount of the loss or outgoing that can be or has been deducted at that time. Any part of an assessable recoupment that is not included in assessable income in the year of receipt because of this limit will be assessed when further amounts can be deducted under Division 40 of the ITAA 1997.

Eligible termination payment

47. An eligible termination payment may receive concessional taxation treatment under Subdivision AA of Division 2 of Part III of the ITAA 1936.

48. Subsection 27A(1) of the ITAA 1936 states that 'eligible termination payment', in relation to a taxpayer, means:

any payment made in respect of the taxpayer in consequence of the termination of any employment of the taxpayer...

49. A payment that is made as a reimbursement is not a payment that is made 'in respect of the taxpayer' for these purposes (*Reseck v. FCT* (1975) 133 CLR 45; 75 ATC 4213; (1975) 5 ATR 538.)

50. Taxation Ruling TR 2003/13 gives the Commissioner's view that the term 'in consequence of termination' for the purposes of subsection 27A(1) of the ITAA 1936 means following on from the termination of employment. The payments made to the WAP applicants are not considered to be made 'in consequence of the termination' of their employment but are received to assist the applicants in establishing new businesses or to develop existing part-time businesses into a new way of earning their livelihood.

Detailed contents list

51. Below is a detailed contents list for this Class Ruling:

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Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TR 2003/13

Subject references:

- assessable recoupments
- bounties and subsidies
- capital gains tax
- eligible termination payments
- ordinary income

Legislative references:

- ITAA 1936 26(g)
- ITAA 1936 Pt III Div 2 Subdiv AA
- ITAA 1936 27A(1)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 6-10(3)
- ITAA 1997 8-1
- ITAA 1997 15-10
- ITAA 1997 Subdiv 20-A
- ITAA 1997 20-20(3)
- ITAA 1997 20-30
- ITAA 1997 20-35
- ITAA 1997 20-40
- ITAA 1997 20-50
- ITAA 1997 Div 40
- ITAA 1997 Pt 3-1
- ITAA 1997 104-25

- ITAA 1997 104-25(3)
- ITAA 1997 108-5
- ITAA 1997 109-5(2)
- ITAA 1997 Div 110
- ITAA 1997 110-45(1B)
- ITAA 1997 110-45(2)
- ITAA 1997 110-45(3)
- ITAA 1997 Div 112
- Copyright Act 1968

Case references:

- First Provincial Building Society v. FCT (1995) 56 FCR 320; 95 ATC 4145; 30 ATR 207
- G.P. International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; (1990) 64 ALJR 392; (1990) 93 ALR 193; (1990) 90 ATC 4413; (1990) 21 ATR 1
- Placer Development Ltd v. Commonwealth of Australia (1969) 121 CLR 353; [1969] ALR 801
- Reseck v. FCT (1975) 133 CLR 45; 75 ATC 4213; (1975) 5 ATR 538
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; (1966) 40 ALJR 205; [1967] ALR 561; (1966) 14 ATD 286

Other references:

- The Macquarie Dictionary, 3rd edn

ATO references

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