

CR 2006/63 - Income tax: Direct Athlete Support Scheme payments provided by the Australian Sports Commission

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Class Ruling

Income tax: Direct Athlete Support Scheme payments provided by the Australian Sports Commission

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ⓘ 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, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are 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); and
 - section 6-10 of the ITAA 1997.

Class of entities

3. The class of entities to which this Ruling applies are athletes who are not carrying on a business as a sportsperson and are in receipt of Direct Athlete Support (DAS) Scheme payments provided by the Australian Sports Commission (ASC) for preparation for the Melbourne 2006 Commonwealth Games (M2006).

Qualifications

4. The Commissioner makes this Ruling 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 13 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.
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Date of effect

8. This Ruling applies for the income years (as defined in the ITAA 1997) for which an athlete is in receipt of M2006 DAS payments. The scheme will cover the income year ended 30 June 2005 and the income year ended 30 June 2006. However, the 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 the Ruling. Furthermore, the Ruling only applies to the extent that:
 - it is not later withdrawn by notice in the *Gazette*; or
 - the relevant provisions are not amended.
9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (Item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).
10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:
 - the income year or other period to which the rulings relate has not begun; and

- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (Item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Withdrawal

12. This Ruling is withdrawn and ceases to have effect after 30 June 2006. However, the Ruling continues to apply after its withdrawal in respect of the tax laws ruled upon to all persons within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the person's involvement in the scheme.

Scheme

13. The scheme that is the subject of this 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 scheme are:

- the Application for a Class Ruling dated 23 August 2005;
- a standard Direct Athlete Support Agreement for the Melbourne 2006 Commonwealth Games;
- a standard letter from the ASC to athletes advising them that they qualify for DAS and referring to the DAS agreement for signing by the athlete;
- a M2006 DAS Scheme Overview;
- a letter from the ASC dated 8 February 2006 providing additional information in relation to the DAS Scheme; and
- a letter from the ASC dated 1 June 2006 providing additional information in relation to payments made under the M2006 DAS Scheme and the relationship to other payments received by the athletes.

14. The ASC paid a total of 494 athletes an amount in relation to the Melbourne 2006 Commonwealth Games – 300 of these athletes received two payments under this Scheme and 194 athletes received only one payment.

15. The payments were made on the basis of a matching contribution from the Australian Commonwealth Games Association.

16. The payments were made in the form of a living allowance and were intended to match the living allowance payments made by sports organisations to their athletes to help athletes commit to the training regime required to maintain top level status in the lead up to the 2006 Commonwealth Games.

17. Payment was dependent upon sports organisations maintaining their financial support for sports and athletes competing in the Commonwealth Games up until the commencement of the 2006 Commonwealth Games. The ASC confirmed that sports organisations had continued their financial support in the lead up to the 2006 Commonwealth Games and added to this support in the form of the M2006 DAS payments.

18. Athletes in receipt of M2006 DAS payments were required to execute an Athlete Agreement ('the Agreement') and meet the conditions set out in that contract in order to receive the M2006 DAS payments.

19. The Agreement committed the ASC to making at least one payment to each athlete. The first payment of \$10,000 was made in April/May 2005. A second payment of \$8,600 was made in December 2005.

20. Eligibility of athletes for the second payment was determined in a review by a moderating group following the relevant benchmark events or the provision of other information. Eligibility was determined on the basis of:

- results as an indicator of medal potential;
- changed circumstances with respect to squad/team make-up;
- changed personal circumstances in regard to individual need;
- progress with respect to ACE assessment; and
- further special consideration applications.

21. The Athlete Agreement includes the following clauses:

2. I agree to:

- a) work towards achieving my full potential in my sport;
- b) maintain a lifestyle conducive to sporting excellence;
- c) continue to train and perform in my sport at a level that is considered by the ASC and my sport's National Sporting Organisation (**my NSO**) as medal potential standard for the Melbourne 2006 Commonwealth Games;
- d) abide by both the rules and the spirit of my sport;
- e) be available to compete for Australia in my sport at the Melbourne 2006 Commonwealth Games;
- f) not compete for a country other than Australia in my sport;

- g) comply with the Anti-Doping Policies of the ASC, my International Federation, and my NSO; and
 - h) keep my NSO and the ASC DAS Administrator, whose name will be provided to me by the ASC, informed of any changes to my contact details.
- 3. I agree to undertake an Athlete Career and Education Services (**ACE**) assessment at the Australian Institute of Sport or at my State/Territory Institute/Academy of Sport.
- 4. I agree that, as I am a recipient of ASC DAS, the ASC may refer to me as an athlete receiving DAS and that where possible I will recognise the support of the Australian Government and the ASC being provided to me through the DAS scheme.
- 5. I agree that:
 - a) this agreement may be terminated immediately by the ASC if I breach this agreement;
 - b) if I breach this agreement, the ASC may require me to repay to the ASC the DAS previously paid to me under this agreement; and
 - c) if the ASC requires me to repay DAS previously paid to me under this agreement, the ASC will give me written notice setting out the amount payable by me and that amount will be a debt due and payable by me to the ASC.
- 6. If, either during the term of this agreement or subsequently, I make any arrangement or agreement with another person (**Sponsor**) for sponsorship or to be involved in the marketing or advertising of goods or services:
 - a) I will not during any marketing or advertising or any sponsorship activity refer or allude to my association with the ASC unless I first obtain the written consent of the ASC; and
 - b) I will require any Sponsor not to make reference or allusion to my association with the ASC unless the written consent of the ASC has first been obtained.
- 7. I agree to provide the following personal information to the ASC for the purposes of administering this agreement and the DAS scheme and promptly advise of any changes to it:
 - a) my full name;
 - b) my current address;
 - c) my bank, credit union or building society account details for DAS payments; and
 - d) any other information requested by the ASC which relates to my obligations under this agreement.
- 8. I acknowledge and authorise:
 - a) that the ASC will receive information about me from my NSO;

- b) that information of a biographical nature only, including my name, home State, event/s, and performance results may be released by the ASC to the public and the media in response to general information requests and may be placed on the ASC website;
 - c) that personal information provided to the ASC may be stored electronically and accessed only by persons authorised by the ASC; and
 - d) that other than as stated above, the personal information provided by me in relation to my DAS may only be disclosed to State Institutes or Academies of Sport, to the Australian Sports Drug Agency and to my NSO, as appropriate for the purposes of administering this agreement and the DAS scheme.
9. Exclusion of Liability and Indemnity
- a) I agree that the ASC (and its employees, agents and contractors) will have no liability for any:
 - i) injury I incur; or
 - ii) illness I suffer; or
 - iii) loss, liability or expense I incuras a result of or in connection with my training or competition; and
 - b) I indemnify the ASC (and its employees, agents and contractors) against any loss, liability or expense incurred by them resulting from or in connection with any breach by me of this agreement or any negligent, unlawful or wilful act or omission by me in the course of my training or competition.
10. I agree that nothing in this agreement creates a relationship of employment or agency between the ASC and me and that I will not be deemed, for any purpose, to be an employee or agent of the ASC.
- ...
11. I accept this support and the benefits and conditions outlined in this agreement and warrant that I do not earn an annual **after tax income** of more than \$50,000 AUD per annum and do not anticipate earning and annual **after tax income** of more than \$50,000 AUD per annum for the year ending 30 June 2006 [from all sources including the receipt of any accommodation, meals and /or living allowances under residential programs (e.g. AIS Residential Athletes) and ... other direct athlete payments].

Ruling

22. Amounts received under the M2006 DAS Scheme are not assessable income for the purposes of section 6-5 of the ITAA 1997 or section 6-10 of the ITAA 1997.

Commissioner of Taxation

12 July 2006

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.

23. 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

24. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included in your assessable income if it is income according to ordinary concepts.

25. 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 by the ordinary concepts and usages of mankind except in so far as statute dictates otherwise;¹
- whether the payment received is income depends upon a close examination of all relevant circumstances;² and
- whether the payment received is income is an objective test.³

26. 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;⁴
- the quality or character of the payment in the hands of the recipient;⁵

¹ *Scott v. FC of T* (1935) 35 SR (NSW) 215; (1935) 3 ATD 142 per Jordan CJ at SR 219; ATD 144.

² *The Squatting Investment Co Ltd v. FC of T* (1953) 86 CLR 570 at 627; (1953) 10 ATD 126 at 146.

³ *Hayes v. FC of T* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73.

⁴ *FC of T v. Harris* (1980) 42 FLR 36 at 40; 80 ATC 4238 at 4241; (1980) 10 ATR 869 at 872 and *Hayes v. FC of T* (1956) 96 CLR 47 at 54; (1956) 11 ATD 68 at 72.

⁵ *FC of T v. Blake* 84 ATC 4661; (1984) 15 ATR 1006 – refer comments of Carter J (at ATC 4664; ATR 1010), *Scott v. FC of T* (1966) 117 CLR 514; (1966) 14 ATD 286 (at CLR 526; ATD 293) and *GP International Pipecoaters Pty Ltd v. FC of T* (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1 (at CLR 136; ATC 4419; ATR 6).

- the form of the receipt, whether it is received periodically or as a lump sum;⁶ and
- the motive of the person making the payment. Motive however, is rarely decisive as a mixture of motives may exist.⁷

27. When considering the first and last factors in paragraph 26 of this Ruling it is appropriate to look at the nature of the relationship between the athletes in receipt of M2006 DAS scheme payments and the ASC which makes the payments.

28. The ASC is administering the Australian Government's 2004 election commitment to sport by providing funding to athletes in the lead up to the Melbourne 2006 Commonwealth Games. This funding is provided through the M2006 DAS Scheme.

29. The athletes in receipt of the M2006 DAS payment are required to maintain a minimum level of performance, continue to participate in international competitions and compete only for Australia. Athletes are also required to adhere to the anti-doping policies of the ASC, their international federation and their national sporting organisation. The Tax Office does not consider that these factors are sufficient to amount to an employer/employee relationship between the ASC and the athlete.

30. As the relationship is not one of employer/employee and there is no legal obligation on the part of the ASC to make these payments to specific athletes we need to consider the nature of the voluntary payment. Paragraph 12 of Taxation Ruling TR 1999/17 states:

A payment which is received as a part of a series of voluntary payments, such as under a grant, will be assessable income in the ordinary sense of the word if it has one or more of the following characteristics:

- (i) it is made under an agreement or arrangement to provide financial support in the form of periodical, regular or recurrent payments;
- (ii) it is received in circumstances where the sportsperson has an expectation of receiving the payment as part of periodical, regular or recurrent payments, and the sportsperson is able to rely on the payment for his or her regular expenditure; or
- (iii) it is part of periodic, regular or recurrent payments made in substitution of income.

Expenses of sports are not allowable deductions against voluntary payments, as these expenses do not relate to the voluntary payment received.

⁶ *FC of T v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82 (at CLR 557; ATD 86).

⁷ *Hayes v. FC of T* (1956) 96 CLR 47; (1956) 11 ATD 68 (at CLR 55; ATD 72-73).

31. The Direct Athlete Support agreement for the Melbourne 2006 Commonwealth Games provides that the agreement may be unilaterally terminated by the ASC if the athlete breaches the agreement. Upon termination the ASC may also require the athlete to repay DAS previously paid under the agreement.

32. The M2006 DAS Scheme Overview states that there will be a second payment made to athletes who continue to meet the eligibility criteria for the M2006 DAS Scheme.

33. Receipt of the M2006 DAS payments by an athlete is dependant on the athlete maintaining a minimum standard of performance and adhering to a certain code of conduct. This requirement itself does not characterise the nature of the payments.

34. The standard letter issued by the ASC to athletes advising that they have been identified to receive the M2006 DAS payment states that the purpose of the payment is to assist with the athlete's daily living costs while preparing for the Melbourne 2006 Commonwealth Games.

35. Paragraph 3.1 of the M2006 DAS Scheme Overview also states that the payment is to be made as a living allowance paid directly to the athletes.

36. Paragraph 48 of Taxation Ruling TR 1999/17 states:

Although there are no fixed criteria, the decisions of the courts show that voluntary payments, such as under a grant, made to a sportsperson are income where they are:

- (i) made under an agreement or arrangement to provide financial support in the form of periodic, regular or recurrent payments;
- (ii) received in circumstances where the sportsperson has an expectation of receiving payments as part of periodic, regular or recurrent payments, and the sportsperson is able to rely on the payment for his or her regular expenditure; or
- (iii) part of periodic, regular or recurrent payments made in substitution of income.

The quality or character of such voluntary payments, in the hands of the sportsperson, is assessable income.

37. The M2006 DAS payments are made under an arrangement to assist with an athlete's daily living costs. These amounts are paid as a living allowance and are stated to be as such. These payments are intended to match the living allowance the athletes receive from other sources. The fact that an athlete will receive one payment and may receive a second means that the DAS payments are not regular, periodic or expected. An athlete cannot rely on receipt of DAS payments. These factors, when considered together, lead to the conclusion that the DAS payments are not income according to ordinary concepts.

38. However a change in the terms of the current scheme may result in the payments being held to be income according to ordinary concepts. If the value of DAS payments increased more than marginally or they were made in instalments rather than as a lump sum this may be sufficient to characterise the amounts received as income according to ordinary concepts.

Statutory income

39. As the M2006 DAS payments are not considered to be ordinary income, it is necessary to consider whether the payments could also be statutory income under section 6-10 of the ITAA 1997.

40. Section 6-10 of the ITAA 1997 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 of the ITAA 1997. That list includes a reference to paragraph 26(e) of the ITAA 1936.

41. Paragraph 26(e) of the ITAA 1936, provides that assessable income shall include

... the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in relation directly or indirectly to, any employment of or services rendered ...

42. The main issue to consider with respect to paragraph 26(e) of the ITAA 1936 is whether the DAS payment is '*... given or granted to him in respect of ... any employment of or services rendered ...*'. Whilst the athletes are not considered 'employees', paragraph 26(e) of the ITAA 1936 also includes in assessable income those allowances etc. which are paid in respect of 'services rendered'.

43. The DAS agreement clearly establishes that the athletes are not providing services to the ASC. The athletes are required to meet certain conditions in order to qualify for the payments however, these conditions do not amount to the rendering of services to the ASC. As such, the DAS payments are not assessable under paragraph 26(e) of the ITAA 1936 because the athletes are not considered to be employees, nor are they 'rendering services'.

General deductions

44. Taxpayers are entitled to deduct from their assessable income any loss or outgoing to the extent it was incurred in gaining or producing their assessable income under section 8-1 of the ITAA 1997.

45. Expenses of sports are not allowable as a deduction against the M2006 DAS payments as these expenses do not relate to the payments received.

Pay as You Go Withholding

46. The relationship between the ASC and the athletes in receipt of the M2006 DAS Scheme payment is not one of employer and employee. Furthermore, the relationship between the athletes and the ASC is not one of the provision of services. Accordingly the payments are not regarded as withholding payments under Division 12 in Schedule 1 to the TAA. The ASC will not be required to withhold amounts from these payments nor will they have any other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, payment summaries, annual reporting.

Appendix 2 – Alternative views

❶ *This Appendix sets out alternative views and explains why they are not supported by the Commissioner. It does not form part of the binding public ruling.*

47. The payments received by athletes under the DAS scheme are stated to be for the express purpose of meeting the athlete's daily living expenses. The payments are intended to defray these expenses to allow the athlete to maintain a sufficiently high standard of performance.

48. For an athlete to be eligible to receive the payments, in addition to maintaining a sufficiently high standard of performance the athlete is also required to warrant that their after tax income from all sources, including accommodation, meals, allowances and other funding, will not exceed \$50,000 annually.

49. The factors outlined in paragraphs 47 and 48 of this Ruling give the DAS payments a strong income flavour and support the conclusion that the payments are income according to ordinary concepts and included in assessable income under subsection 6-5(1) of the ITAA 1997. However for the reasons outlined in paragraphs 23 to 37 of this Ruling the Commissioner does not accept this view.

Appendix 3 – Detailed contents list

50. 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 1999/17

Subject references:

- voluntary payments to sportspersons

Legislative references:

- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
- TAA 1953
- TAA 1953 Sch 1 Div 12
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Case references:

- FC of T v. Blake 84 ATC 4661; (1984) 15 ATR 1006
- FC of T v. Dixon (1952) 86 CLR 540; (1952) 10 ATD 82
- FC of T v. Harris (1980) 42 FLR 36; 80 ATC 4238; (1980) 10 ATR 869
- GP International Pipecoaters Pty Ltd v. FC of T (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. FC of T (1956) 96 CLR 47; (1956) 11 ATD 68
- Scott v. FC of T (1935) 35 SR (NSW) 215; (1935) 3 ATD 142
- Scott v. FC of T (1966) 117 CLR 514; (1966) 14 ATD 286
- The Squatting Investment Co Ltd v. FC of T (1953) 86 CLR 570; (1953) 10 ATD 126

ATO references

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