


# ***CR 2007/31 - Income tax: Department of Education, Science and Training: Australian Vocational Student Prize***

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## Class Ruling

### Income tax: Department of Education, Science and Training: Australian Vocational Student Prize

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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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided 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

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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);
- section 6-10 of the ITAA 1997;
- section 10-5 of the ITAA 1997; and
- section 15-2 of the ITAA 1997 (former paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936)).

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 is student recipients of the Australian Vocational Student Prize (AVSP) which is awarded and administered by the Department of Education, Science and Training (DEST). In this Ruling these entities are referred to as 'student recipients'.

## 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 13 to 31 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

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8. This Ruling applies from 1 July 2005.

9. 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.

10. 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)).

11. 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.

12. 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).

## **Scheme**

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13. The following description of the scheme is based on information provided by the applicant.

14. The AVSPs are prizes awarded annually by the DEST.

15. The purpose of the AVSP is to encourage and recognise outstanding senior secondary students undertaking a Vocational Education and Training in Schools programme (VET programme) or School-based New Apprenticeship (Apprenticeship programme). The AVSP is focused on recognising excellence in the vocational studies of school students.

16. The principal purposes of the Apprenticeship programme are to provide an incentive for more students to stay on at school and to encourage more students to pursue a trade qualification. The AVSP's are awarded with this objective in mind.

17. The award is principally in recognition of vocational education achievement.

18. The criteria for the award are the same whether the student is undertaking a VET or Apprenticeship program.

19. The AVSP provides a pathway to assist young people to develop industry specific skills and to gain nationally recognised qualifications. Students in the VET programme or Apprenticeship programme have their achievements recorded on their Year 12 certificate.

20. All students undertaking a VET programme or Apprenticeship programme receive training from a Registered Training Organisation (RTO) or a school in partnership with an RTO. The RTO is responsible for granting qualifications under the Australian Qualifications Framework.

21. Most programmes include formal structured work placements. Apprenticeship programme students must also undertake training in the workplace in order to complete their certificates as vocational qualifications are competency based.

22. Apprenticeship programme students are enrolled in a senior secondary certificate while undertaking an apprenticeship under a training agreement with an employer. Their apprenticeship is recognised on the senior secondary certificate. Under these arrangements the students are both full time students and part time employees. The students are paid (as trainees under a formal training agreement) for the work they undertake with the employer. The hours per week that the students work as apprentices vary between employers.

23. Students are eligible for nomination for the AVSP if they:

- complete Year 12 in the relevant year or be on track to complete Year 12;
- as part of their senior secondary studies they have made substantial progress towards or completed a VET programme or an Apprenticeship programme; and
- are Australian citizens or permanent residents.

24. All students must be nominated by the school principal of their school or education provider. The students are not able to nominate themselves. The students or their parents/guardians must sign the nomination form.

25. In making the nomination, the school principal must address the following criteria, indicating the student has demonstrated:

- strong evidence of outstanding skill and high achievement;
- high to exceptional level of determination and commitment to achieve outstanding outcomes; and
- outstanding employability skills being communication, team work problem solving, initiative and enterprise, planning and organising, self-management, learning and technology skills.

26. All nominations in relation to AVSP must include a statement of achievement to date from the RTO. All nominations in relation to Apprenticeship programme students must be endorsed by their apprenticeship employer.

27. Not all nominations are successful. The assessment of the merit of the nominations for the AVSP is made by officers of DEST looking at the student's skill, commitment and achievements. Other factors such as the student's ability to overcome adversity to achieve exceptional outcomes will also be considered.

28. The AVSP was awarded for the first time in 2005 and is to be awarded annually. Approximately 500 students nationally are awarded the AVSP.

29. Each AVSP consists of a cash prize of \$2,000 and a certificate. There are no conditions or time frame attached to how the cash prize is spent by the student recipients.

30. The AVSP is not paid in relation to or for any services provided by the student recipients to any person, organisation or DEST.

31. Whilst Apprentice programme students are employed under a training agreement with their employer, there is no guarantee that the students will become full-time employee apprentices with their employer at the completion of their secondary studies.

## **Ruling**

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32. The payment under the AVSP does not form part of the student recipient's assessable income under either section 6-5 or section 6-10 or section 15-2.

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**Commissioner of Taxation**

24 April 2007

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## 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.*

33. A payment or other benefit is assessable income if it is:
- income in the ordinary sense of the word (*ordinary income*); or
  - through the operation of the provisions of the tax law is included in assessable income (*statutory income*).

### Ordinary income

34. Subsection 6-5(1) provides that an amount is included as assessable income if it is income according to ordinary concepts (*ordinary income*).

35. In determining whether a prize or gift is ordinary income, the courts have established that consideration of the whole of the circumstances is necessary and that the following factors need to be taken into account:

- how, in what capacity, and for what reason the recipient received the prize or gift (*Squatting Investment Co Ltd v. Federal Commissioner of Taxation* (1953) 86 CLR 570; (1953) 5 AITR 496; (1953) 10 ATD 126 (*Squatting Investment Case*);
- whether the prize or gift is of a kind which is a common incident of the recipient's calling or occupation (*Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 10 AITR 367; (1966) 14 ATD 286 (*Scott's Case*);
- whether the prize or gift is made voluntarily;
- whether the prize or gift is solicited (*Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; (1956) 6 AITR 248; (1956) 11 ATD 68 (*Hayes' Case*) and *Scott's Case*);
- whether the prize or gift can be traced to gratitude engendered by some service rendered by the recipient to the prize or gift donor (*Squatting Investment Case*);
- the motive of the prize or gift donor (though this factor is rarely decisive in itself) (*Hayes' Case*); and
- whether the recipient relies on the prize or gift for regular maintenance of themselves and any dependants (*Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 5 AITR 443; (1952) 10 ATD 82 (*Dixon's Case*) and *FC of T v. Blake* (1984) 75 FLR 315; (1984) 15 ATR 1006; 84 ATC 4661).

36. The AVSP is awarded to the student recipients in recognition of an outstanding achievement in their vocational studies. The criteria for the award are the same whether the student is undertaking a VET programme or Apprenticeship programme.

37. Neither the VET programme nor Apprenticeship programme recipient students receive the AVSP for employment or services rendered. Whilst recipient students under the Apprenticeship programme are employed as an apprentice, they receive the AVSP in respect of their vocational studies and not in respect of their employment as an apprentice.

38. Having regard to the nature of the prize, the character of the payment in the hand of the student recipient is such that it is a personal windfall or gain not having the qualities of income.

39. The AVSP is made voluntarily by DEST and the students are unable to nominate themselves.

40. It is accepted that the payment under the AVSP is not relied upon by the student recipients for their regular maintenance.

41. In view of all of these circumstances it is accepted that the payment under AVSP is not ordinary income of the student recipients.

### **Statutory income**

42. Section 6-10 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included in assessable income by another provision. Section 10-5 lists those provisions. Included in this list and of relevance to this matter is section 15-2.

43. Subsection 15-2(1) provides that:

Your 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 or services rendered by you ...

44. Prior to 14 September 2006, the former paragraph 26(e) of the ITAA 1936 applied to student recipients in the same manner to section 15-2 of the ITAA 1997.

45. Those student recipients who participate in the Apprenticeship programme are in employment as part of their apprenticeship. Their employer is required to endorse their nomination for the ASVP but has no other role in the selection of recipients or the award or payment of the AVSP.



46. Although one of the essential criteria for the award is that the student recipient has demonstrated outstanding employability skills, this is not necessarily dependent on the student's work as an apprentice. These qualities are expected to be evaluated through the student demonstrating communication, teamwork, problem solving, initiative and enterprise, planning and organising, self management, learning and technology skills. As the student's school principal must address these criteria in their nomination of the student for the award, the assessment is largely based on the student's performance at school.

47. The question arises as to whether the prize was awarded directly or indirectly in relation to any employment of the student recipients of the AVSP.

48. The leading cases on this question are *Dixon's Case* and *Scott's Case*. In both cases, it was decided that the phrase 'an indirect consequence of employment' was not an open ended concept. Rather, there must still be a connection between the payment and the employment such that the receipt 'is in a relevant sense a product' of the employment.

49. Having regard to the nature of the AVSP, it cannot be regarded, in a real sense, as a product of any employment of the student recipients. Nor is it a reward provided for services rendered. It is in recognition of the achievement of the student recipients in their vocational studies. The value of the AVSP is therefore not assessable under section 15-2.

## **Appendix 2 – Detailed contents list**

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50. The following is a detailed contents list for this Ruling:

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## References

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### *Previous draft:*

Not previously issued as a draft

### *Subject references:*

- exempt income
- prizes and awards
- windfall gains

### *Legislative references:*

- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 15-2(1)
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

### *Case references:*

- FC of T v. Blake (1984) 75 FLR 315; (1984) 15 ATR 1006; 84 ATC 4661
- FC of T v. Dixon (1952) 86 CLR 540; (1952) 5 ATR 443; (1952) 10 ATD 82
- Hayes v. DC of T (1956) 96 CLR 47; (1956) 6 ATR 248; (1956) 11 ATD 68
- Scott v. FC of T (1966) 117 CLR 514; (1966) 10 ATR 367; (1966) 14 ATD 286
- Squatting Investment Co Ltd v. FC of T (1953) 86 CLR 570; (1953) 5 ATR 496; (1953) 10 ATD 126

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### ATO references

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