


***CR 2013/59 - Income tax: Australian Government
Direct Athlete Support Scheme payments provided
by the Australian Sports Commission***

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Class Ruling

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

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❶ 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 provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

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 104-25 of the ITAA 1997; and
- section 118-37 of the ITAA 1997.

All subsequent legislative references in this Ruling are to the ITAA 1997 unless otherwise stated.

Class of entities

3. The class of entities to which this Ruling applies comprises athletes who are not carrying on a business as a sportsperson and are in receipt of payments provided by the Australian Sports Commission (ASC) under the Australian Government Direct Athlete Support (DAS) Scheme.

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 8 to 17 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 July 2010. 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.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

9. In May 2010, the Australian Government announced the Australian Government Direct Athlete Support (DAS) Scheme. Its objective is to assist athletes in maintaining their training regimes and to allow them to participate at the highest level in their chosen sports. DAS is administered by the Australian Sports Commission (ASC).

10. The primary objective of the DAS scheme is to provide direct financial assistance to targeted world-class athletes, as nominated by their respective ASC recognised National Sports Organisation (NSO),

selected on the basis of medal potential and individual need. Medal potential is based on performance at agreed benchmark competitions (BMCs), with relevant results being top 10 BMC results only in:

- individual sports
- relays, multi athlete events
- team events.

11. Special considerations may be applied where BMC performances do not validate the athlete or team nominated, and a case can be made through additional supporting information that medal potential exists due to a variety of circumstances.

12. To be eligible for the scheme, athletes are identified as having medal potential by their respective NSOs, or are identified as having an individual need, and are also required to:

- be a current member of a national team or training squad
- maintain a preparation and competition program developed in consultation with and endorsed by the NSO, to be of sufficient standard that would be required to perform to benchmark standard or higher at the next event of international significance in their sport
- be able to demonstrate an after tax income of less than \$60,000 AUD per annum, averaged over the past four financial years.

13. The funding process operates as follows:

- Athletes are nominated by ASC recognised NSOs for consideration of a DAS payment on a six monthly basis.
- The DAS Moderating Group considers the nominations and makes final recommendations to the ASC's General Manager, Sports Development Division for approval.
- Successful nominees are classed as either a Tier 1 or Tier 2 athlete based on their performance. Tier 1 athletes will be entitled to receive a minimum of \$9,000 for the six month funding period and Tier 2 athletes a minimum of \$3,000.
- Payments to athletes are made by the ASC directly to the athlete's bank account.

14. The DAS Moderating Group is made up of six ASC representatives. In addition, one delegate may be supplied by each of the Australian Commonwealth Games Association, the Australian Olympic Committee, the Australian Paralympic Committee, and the National Elite Sports Council.

15. The following principles apply to the application of funding:
- All Tier 1 notional funding allocations are the same level regardless of whether the potential recipient's projected results is first or fifth, or whether they competed in an individual or team event.
 - All Tier 2 notional funding allocations are the same level regardless of whether the potential recipient's projected results is sixth or tenth, or whether they competed in an individual or team event.
 - For team sports, the number of notional allocations are to a maximum of 100% of the official team size as at the next BMC as specified under the rules of the sport's international governing body.
 - For relay events, the number of notional allocations are to a maximum of 150% of the official team size.
 - For multi-athlete events, the number of notional allocations are to a maximum of 100% of the actual team size.
 - Variation to payment amounts, considering the scope of needs within an athlete group, is permissible in team, relay, and multi-athlete events under the condition that each athlete receives a minimum of 20% of the notional allocation amount for the six month funding period.
 - DAS recipients can receive only one DAS allocation for each six month funding period. Athletes who are potential medallists in multiple events will only receive one DAS allocation in a funding period.
 - The DAS grant is paid directly to the athlete's nominated bank account within 14 days of the ASC receiving the correctly completed paperwork.
16. In order to receive DAS payments, athletes are required to sign an Athlete Agreement.
17. The Athlete Agreement contains the following clauses:
6. I agree to:
- (a) 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 <event>;
 - (b) work towards achieving my full potential in my sport;
 - (c) maintain a lifestyle conducive to sporting excellence;
 - (d) abide by both the rules and the spirit of my sport;
 - (e) abide by all obligations that I owe to my NSO as a member of any team or squad of my NSO;

- (f) maintain the high standard of personal behaviour expected of an athlete representing Australia;
- (g) not bring myself, the ASC, my sport or my NSO into disrepute;
- (h) be available to compete for Australia in my sport, including at the Event;
- (i) not compete for a country other than Australia in my sport;
- (j) comply with the Anti-Doping Policies of the ASC, my sport's International Federation, and my NSO; and
- (k) undertake an Athlete Career and Education Services assessment at the Australian Institute of Sport or at my State/Territory Institute/Academy of Sport.

...

10. I agree that:

- (a) if I breach any grant conditions (including a breach of any warranties in clause 5 or breach any of the obligations in clause 6), the ASC may require me to repay to the ASC the DAS previously paid to me under this agreement;
- (b) 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; and
- (c) the ASC may exercise its rights under this clause 10 at any time during or after the term of this agreement.

...

15. 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.

Ruling

18. Payments received under the DAS Scheme are not assessable income for the purposes of section 6-5 or section 6-10.

19. CGT event C2 under section 104-25 happens when an athlete receives a payment. However, any capital gain or capital loss is disregarded under subsection 118-37(2).

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.

20. 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

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

22. 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.

23. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*, 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.¹

24. Amounts that are periodical, regular or recurrent, relied upon and expected on a periodic basis by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income,² 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

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

² *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82; 5 AITR 443.

³ *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 570; (1956) 11 ATD 68; *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, 568; (1952) 10 ATD 82, 92; (1952) 5 AITR 443, 456 (per Fullagar J).

25. 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

26. Athletes in receipt of DAS payments 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 NSO. The Commissioner does not consider that these factors are sufficient to amount to an employer/employee relationship between the ASC and the athlete.

27. The DAS payments are made to world-class athletes to assist them to maintain a training regime to enable them to successfully compete internationally. The fact that an athlete qualifies for a payment in one funding period does not automatically qualify them for payments in later funding periods. Athletes are required to meet all of the eligibility criteria each funding period, including being assessed on medal potential based on their performance at agreed BMCs. Therefore, although an individual athlete may receive a payment in more than one funding period, the payments are not considered to be regular, periodic or expected. An athlete can not rely on receipt of a DAS payment in a later funding period. These factors, when considered together, lead to the conclusion that the DAS payments are not income according to ordinary concepts.

Statutory income

28. Section 6-10 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included as assessable income by another provision.

29. Section 10-5 lists provisions about statutory income and included in this list is section 15-2.

30. Section 15-2 includes in a taxpayer's assessable income the value of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to the taxpayer 'in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by' the taxpayer.

31. While the athletes are not considered to be 'employees', section 15-2 also includes in assessable income those allowances etc which are paid in respect of 'services rendered'.

⁵ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514, 526; (1966) 14 ATD 286, 293; (1966) 10 AITR 367, 375; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47, 55; (1956) 11 ATD 68, 73; (1956) 6 AITR 248, 254; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375, 402; 77 ATC 4255, 4273; (1977) 7 ATR 519, 539.

⁶ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570, 627; (1953) 5 AITR 496; 24 ATR 527.

⁷ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; (1966) 14 ATD 286, 293; (1966) 10 AITR 367, 376.

32. There is no agreement that requires athletes to provide or supply services to the ASC. The athletes are required to meet certain conditions in order to qualify for the payment, however these conditions do not amount to the rendering of services to the ASC. As such, the DAS payments are not assessable under section 15-2 because the athletes are not considered to be employees, nor are they 'rendering services'.

Capital gains tax

33. An athlete's entitlement to receive a DAS payment is a CGT asset under subsection 108-5(1) that is acquired when the grant is accepted.

34. CGT event C2 happens under section 104-25 when an athlete's entitlement to receive the payment is satisfied. The time of the CGT event under subsection 104-25(2) is when the payment is made.

35. However, any capital gain or capital loss resulting from CGT event C2 happening is disregarded under paragraph 118-37(2)(a). That paragraph provides a CGT exemption for a capital gain or capital loss that results from the receipt of a payment as reimbursement or payment of expenses under a scheme established by an Australian government agency under an enactment or an instrument of a legislative character. The DAS Scheme is such a scheme.

General deductions

36. As any DAS payments received by an athlete are not assessable income, all losses and outgoings that are incurred in connection with the athlete's sporting activities are not allowable as a deduction under section 8-1. Nor is a deduction allowable under any other provision of the ITAA 1997.

Pay as You Go Withholding

37. As explained above, DAS payments made to athletes are not assessable income. The payments are not regarded as a withholding payment under Division 12 of Schedule 1 to the *Taxation Administration Act 1953*. The ASC is not required to withhold amounts from these payments, nor do they have any other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, providing payment summaries, or annual reporting.

Appendix 2 – Detailed contents list

38. 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 2006/10

Subject references:

- CGT assets
- CGT events C1-C3 – end of a CGT asset
- CGT exemptions
- exempt income
- sportspersons
- voluntary payments to sportspersons

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 104-25
- ITAA 1997 104-25(2)
- ITAA 1997 108-5(1)
- ITAA 1997 118-37
- ITAA 1997 118-37(2)
- ITAA 1997 118-37(2)(a)
- TAA 1953
- TAA 1953 Sch 1 Div 12

Case references:

- *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82; 5 AITR 443
- *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 570; (1956) 11 ATD 68
- *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. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392
- *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570; (1953) 5 AITR 496; 24 ATR 527
- *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367

ATO references

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Income Tax ~~ Exempt income ~~ allowances and benefits

