


# ***CR 2014/23 - Income tax: Assessable income: payments received under the Western Australian Government Grandcarer Support Scheme***

 This cover sheet is provided for information only. It does not form part of *CR 2014/23 - Income tax: Assessable income: payments received under the Western Australian Government Grandcarer Support Scheme*



## Class Ruling

### Income tax: Assessable income: payments received under the Western Australian Government Grandcarer Support Scheme

---

Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
<b>What this Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>7</b>
<b>Scheme</b>	<b>8</b>
<b>Ruling</b>	<b>18</b>
<b>NOT LEGALLY BINDING SECTION:</b>	
<b>Appendix 1:</b>	
<b>Explanation</b>	<b>20</b>
<b>Appendix 2:</b>	
<b>Detailed contents list</b>	<b>34</b>

#### **ⓘ 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), and
  - section 15-2 of the ITAA 1997.

All subsequent 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 is individuals who receive a payment under the Western Australian (WA) Government Grandcarer Support Scheme (the Scheme) administered by Wanslea Family Services (Wanslea).

## 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 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 26 November 2013. 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.
9. On 26 November 2013 the WA Government launched the Grandcarer Support Scheme, which will be administered by Wanslea in partnership with the WA Department of Local Government and Communities.
10. The Scheme recognises the financial sacrifice that many grandcarers make when taking on full-time parenting responsibilities of their grandchildren in circumstances where the child's parents, for a variety of reasons, are unable or unwilling to assume their parental responsibilities.
11. For the purposes of the Scheme, grandcarers are the legally, biologically, or culturally defined grandparents (including a biological, adoptive, step grandparent or culturally 'grandparent-like' relationship) at least one generation removed, who have assumed the full-time, primary care of their grandchild (under 16 years of age), where the care of that child may otherwise have required state intervention.

12. The grandcarers in these cases have prevented state care, and have experienced financial hardship as a result. The Scheme payment is intended to assist them with this situation, providing extra cash for the many expenses that having a child entails.

13. To be eligible to receive a payment under the Scheme, the grandcarer must have the care of the child at the time of registration and have done so for at least four months during the preceding twelve months (but not necessarily for a continuous period).

14. The Scheme will provide grandcarers with a payment of \$400 per annum for the first grandchild under the age of 16 years, and \$250 per annum for each additional grandchild under the age of 16 years.

15. Only one payment per grandchild will be made in each year. Grandcarers must make a new application each year to receive a payment. Receipt of a payment in one year does not guarantee payment in subsequent years.

16. Grandcarers can appeal a decision not to make a payment by formally writing to Wanslea and providing further evidence to support their application.

17. Grandcarers in receipt of foster care payments from the WA Department of Child Protection and Family Support are not eligible to receive payments under the Scheme.

## **Ruling**

---

18. A payment received under the WA Government Grandcarer Support Scheme, administered by Wanslea, is not assessable as ordinary income under section 6-5.

19. A payment received under the WA Government Grandcarer Support Scheme, administered by Wanslea, is not assessable as statutory income under section 15-2.

---

**Commissioner of Taxation**

26 February 2014

---

## 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.*

### Section 6-5 – income according to ordinary concepts

20. A payment is assessable income if:
- it is income in the ordinary sense of the word (ordinary income); or
  - it is not ordinary income but through the operation of the legislation it is included in assessable income (statutory income).

### Ordinary income

21. Subsection 6-5(1) provides 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*,<sup>1</sup> 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.

24. Amounts that are periodical, regular or recurrent, relied upon by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income,<sup>2</sup> as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.<sup>3</sup> Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.<sup>4</sup>

<sup>1</sup> (1990) 170 CLR 124 at 138; [1990] HCA 25 at [14]; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

<sup>2</sup> *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; [1952] HCA 65; (1952) 10 ATD 82; (1952) 5 AITR 443.

<sup>3</sup> *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; [1956] HCA 21; (1956) 11 ATD 68; (1956) 6 AITR 248; *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; [1995] FCA 1611; 95 ATC 4691; (1995) 31 ATR 392.

<sup>4</sup> *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; [1952] HCA 65 at [7]; (1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 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.<sup>5</sup> The whole of the circumstances must be considered<sup>6</sup> and the motive of the payer may be relevant to this consideration.<sup>7</sup>

26. Payments under the Scheme are limited to a single lump sum in any year. Grandcarers must make a new application each year to receive a payment. Receipt of a payment in one year does not guarantee payment in subsequent years. Therefore, although an individual grandcarer may receive a payment in more than one year, the payments are not considered to be periodical, regular, recurrent or relied upon by the grandcarer for their regular expenditure.

27. The purpose of the payment is not to supplement the income of the grandcarer, rather it is to assist in defraying some of the additional costs that the grandcarer may incur. Further, the payments are not made for services the grandcarer provides to the government.

28. These factors, when considered together, lead to the conclusion that the payments are not income according to ordinary concepts.

29. Accordingly, the payments will not be assessable as ordinary income.

### **Statutory income**

30. Section 6-10 refers to assessable 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. The most relevant provision to consider in relation to this Scheme is the potential operation of section 15-2.

31. Amounts that are a reward or remuneration for services rendered, or a product, incident or consequence of employment, come within the scope of section 15-2.<sup>8</sup>

32. Grandcarers covered by this Ruling are not considered to be employees of the government. The payments are not a product or incident of any employment or a reward for services rendered by them. As such, the payments are not assessable under section 15-2.

33. As the payments are neither ordinary nor statutory income, they are not assessable income of the grandcarers who receive them.

---

<sup>5</sup> *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; [1966] HCA 48 at [22]; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 375; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55; [1956] HCA 21 at [17]; (1956) 11 ATD 68 at 73; (1956) 6 AITR 248 at 254; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375 at 402; [1977] FCA 3 at [35]; 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

<sup>6</sup> *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627; [1953] HCA 13 at [3].

<sup>7</sup> *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; [1966] HCA 48 at [22]; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

<sup>8</sup> *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513; [1987] HCA 48; 87 ATC 4883; (1987) 19 ATR 274.

---

**Appendix 2 – Detailed contents list**

---

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

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant provisions	2
Class of entities	3
Qualifications	4
<b>Date of effect</b>	<b>7</b>
<b>Scheme</b>	<b>8</b>
<b>Ruling</b>	<b>18</b>
<b>Appendix 1 – Explanation</b>	<b>20</b>
Section 6-5 – income according to ordinary concepts	20
Ordinary income	21
Statutory income	30
<b>Appendix 2 – Detailed contents list</b>	<b>34</b>

## References

*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- carer payments
- income

*Legislative references:*

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 10-5
- ITAA 1997 15-2
- TAA 1953
- Copyright Act 1968

*Case references:*

- *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375; [1977] FCA 3; 77 ATC 4255; (1977) 7 ATR 519
- *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; [1995] FCA 1611; 95 ATC 4691; (1995) 31 ATR 392

- *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; [1952] HCA 65; (1952) 10 ATD 82; (1952) 5 AITR 443
- *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; [1990] HCA 25; 90 ATC 4413; (1990) 21 ATR
- *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; [1956] HCA 21; (1956) 11 ATD 68; (1956) 6 AITR 248
- *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; [1966] HCA 48; (1966) 14 ATD 286; (1966) 10 AITR 367
- *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513; [1987] HCA 48; 87 ATC 4883; (1987) 19 ATR 274
- *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570; [1953] HCA 13

## ATO references

NO:	1-58N198V
ISSN:	1445-2014
ATOlaw topic:	Income Tax ~~ Assessable income ~~ government payments

**© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).