CR 2015/19 - Income tax: grants provided by the Australian Sports Commission under dAIS

Class Ruling

Income tax: grants provided by the Australian Sports Commission under dAIS

Contents Para

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.

*[**Note:** This is a consolidated version of this document. Refer to the Legal Database (ato.gov.au/law) to check its currency and to view the details of all changes.]*

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)
- 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 are to the ITAA 1997, unless otherwise indicated.

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 a grant provided by the Australian Sports Commission (ASC) under dAIS.

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 27 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 2014 to 30 June 2023. The Ruling continues to apply after 30 June 2023 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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 *Public Rulings*).

Scheme

8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Application for a class ruling dated 8 October 2014
- dAIS Guidelines (Guidelines)
- dAIS Athlete Agreement (Agreement)
- additional information received 4 November 2014
- additional information received 11 February 2021.

9. dAIS provides an opportunity for athletes in Olympic, Paralympic and Commonwealth Games sports to receive a direct cash grant from the Australian Government. Athletes may be nominated by their National Sporting Organisation (NSO) to receive a dAIS grant if they:

- achieved a podium result at a recent world championship level event and are expected to maintain that level of performance, or
- demonstrate potential to achieve a podium result at a future world championship level event

and meet certain other eligibility criteria as set out in the Guidelines.

10. The Guidelines provide an outline of the scheme to athletes and NSOs. They are subject to change and may be updated from time to time.

11. dAIS supersedes the previous Direct Athlete Support scheme and is administered by the Australian Institute of Sport (AIS).

Eligibility criteria

12. To be considered for a dAIS grant, an athlete must:

- be nominated by their NSO to receive a dAIS grant
- be training to represent Australia in an event/discipline that is on the program for a future Olympic or Paralympic Games, or in an event/discipline in the sport of lawn bowls, netball or squash that is on the schedule for a future Commonwealth Games (Eligible Discipline)
- be an Australian citizen and eligible to represent Australia at the next Olympic, Paralympic or Commonwealth Games
- be following an individual performance plan which has been endorsed by their NSO
- be categorised in accordance with the *Australia's Winning Edge* Athlete Categorisation until 30 June 2018
- be categorised in accordance with the AIS Athlete Categorisation from 1 July 2018
- until 30 June 2018, satisfy the means test, meaning that the athlete must not have earned an after tax income of more than $60,000 AUD per annum (averaged over the last four financial years ending 30 June) from all sources excluding previous dAIS and Direct Athlete Support grants provided by the AIS and discretionary grants issued by the Australian Sports Foundation arising from philanthropic donations

- from 1 July 2018, satisfy the means test, meaning that the athlete must not have earned an after-tax income of more than $70,000 AUD per annum (averaged over the last four financial years ending 30 June) from all sources excluding previous dAIS and Direct Athlete Support grants provided by the AIS and discretionary grants issued by the Australian Sports Foundation arising from philanthropic donations
- have a signed agreement with their NSO, and not be in breach of that agreement
- have not breached the terms of any previous dAIS or Direct Athlete Support Agreement, and
- hold a review or confirmed status international classification (applies to para athletes only). Para athletes who do not hold an international classification should hold a national classification and be planning to seek international classification within an acceptable timeframe.

Performance considerations

13. Athletes who satisfy the above eligibility criteria may be considered for a dAIS grant if they also meet certain performance considerations as detailed in the Guidelines.

14. The AIS may consider other indicators of performance potential such as a medal performance at a previous world championship, results at other recent events, the gap in performance to a medal performance, world ranking and quality of daily training environment.

Athletes in Olympic, Paralympic and Commonwealth cross-over disciplines

15. Athletes who compete in an Eligible Discipline in an Olympic or Paralympic sport may be considered for a dAIS grant as set out below. This includes athletes who compete in a Commonwealth Games event/discipline that is also an Olympic or Paralympic event/discipline.

16. The performance considerations and grant amounts for athletes in Olympic and Paralympic disciplines up until February 2017 are as follows:

Tier	Tier Performance considerations	Minimum notional grant (six-month period)
1	• 1st place at a world championship (or equivalent event) in the last 12 months, and • Potential to medal at the next Olympic or Paralympic Games	$17,500
2	• 2nd – 3rd place at a world championship (or equivalent event) in the last 12 months; and • Potential to medal at the next Olympic or Paralympic Games	$16,000
3	• 4th – 6th place and in the top 50% of competitors at a world championship (or equivalent event) in the last 12 months, and • Potential to medal at a future Olympic or Paralympic Games	$13,500
4	• 7th – 8th place in the main final and in the top 50% of competitors at a world championship (or equivalent event) in the last 12 months, and • Potential to medal at a future Olympic or Paralympic Games	$7,500
5	• Other priority athletes with potential to medal at the next Olympic or Paralympic Games • Typically a *Podium Potential B* athlete (or higher)	$4,000 - $6,000
6	• Other priority athletes with the potential to medal at a future Olympic or Paralympic Games • Typically a *Developing A* athlete (or higher)	$2,500 - $3,500

17. To be eligible for tier 3 or 4 dAIS, individual athletes and teams who finish 4th – 8th at a world championship (or equivalent event) are generally expected to finish in the top 50 per cent of their competitors at that particular event. The AIS may, at its discretion, take into consideration other factors such as any qualifying event to limit the number of competitors, and the difference between the athlete's performance and a medal performance.

18. NSOs may be invited to nominate athletes to receive tier 5 and/or 6 dAIS. The amount available for each sport is at the discretion of the AIS and may differ between funding rounds. It will be based on a number of factors including, but not limited to, the sport's

Australia's Winning Edge category, medal targets, quality of athletes in the *Podium Potential B* and *Developing A* categories, and budget availability.

18A. The performance considerations and grant amounts for athletes in Olympic and Paralympic disciplines from March 2017 are as follows:

Tier / A	Tier Performance considerations	Minimum notional grant (six -month period)
OP1	• 1st place at a world championship (or equivalent event) in the last 12 months, and • Potential to medal at the next Olympic or Paralympic Games	$17,500
OP2	• 2nd place at a world championship (or equivalent event) in the last 12 months, and • Potential to medal at the next Olympic or Paralympic Games	$16,500
OP3	• 3rd place at a world championship (or equivalent event) in the last 12 months, and • Potential to medal at the next Olympic or Paralympic Games	$15,500
OP4	• 4th place at a world championship (or equivalent event) in the last 12 months, and • Potential to medal at a future Olympic or Paralympic Games	$14,000
OP5	• 5th – 6th place at a world championship (or equivalent event) in the last 12months, and • Potential to medal at a future Olympic or Paralympic Games	$11,500
OP6	• 7th – 8th place at a world championship (or equivalent event) in the last 12 months, and • Potential to medal at a future Olympic or Paralympic Games	$7,500
OP7	• Other priority athletes with potential to medal at the next Olympic or Paralympic Games	$2,000 - $6,000

18B. To be eligible for OP5 or OP6 dAIS, individual athletes and teams who finish 5th – 8th at a world championship (or equivalent event) are generally expected to finish in the top 50% of their

competitors at that particular event. The AIS may, at its discretion, take into consideration other factors such as any qualifying event to limit the number of competitors, and the difference between the athlete's performance and a medal performance.

18C. NSOs may be invited to nominate athletes to receive OP7 dAIS. The amount available for each sport is at the discretion of the AIS and may differ between funding rounds. It will be based on a number of factors including, but not limited to, the sport's *High Performance* category, medal targets, quality of athletes and budget availability.

Athletes in Commonwealth-only sports

19. Athletes that compete in an Eligible Discipline in the sport of lawn bowls, netball or squash up until August 2018 may be considered for a dAIS grant as set out below.

Tier / B	Tier Performance considerations	Minimum notional grant (six- month period)
1	• 1st place at the most recent world championship (or equivalent event), and • Potential to place 1st at the next world championship (or equivalent event)	$17,500
2	• 2nd place at the most recent world championship (or equivalent event), and • Potential to medal at the next world championship (or equivalent event)	$10,000
3	• 3rd place at the most recent world championship (or equivalent event), and • Potential to medal at the next world championship (or equivalent event)	$7,500
4	• Other priority athletes with the potential to medal at the 2018 Commonwealth Games	$4,000 - $6,000

20. NSOs may be invited to nominate athletes to receive tier 4 dAIS. The amount available for each sport is at the discretion of the AIS and may differ between funding rounds. Funding will be prioritised to sports that do not qualify any athletes for tier 1-3 dAIS and will be based on the sport's ability to medal at the 2018 Commonwealth Games.

20A. Athletes that compete in an Eligible Discipline in the sport of lawn bowls, netball or squash from September 2018 may be considered for a dAIS grant as set out below:

Tier	Tier Performance considerations	Minimum notional grant (six-month period)
CG1	• 1st place at the most recent world championship (or equivalent event), and • Potential to place 1st at the next world championship (or equivalent event)	$17,500
CG2	• 2nd place at the most recent world championship (or equivalent event), and • Potential to medal at the next world championship (or equivalent event)	$10,000
CG3	• 3rd place at the most recent world championship (or equivalent event), and • Potential to medal at the next world championship (or equivalent event)	$7,500
CG4	• Other priority athletes with the potential to medal at the 2022 Commonwealth Games	$2,000 - $6,000

20B. NSOs may be invited to nominate athletes to receive CG4 dAIS. The amount available for each sport is at the discretion of the AIS and may differ between funding rounds. Funding will be prioritised to sports that do not qualify any athletes for tier CG1-3 dAIS and will be based on the sport's ability to medal at the 2022 Commonwealth Games.

Athlete responsibilities

21. Athletes may not accept an offer of a dAIS grant until such time that they have:

- agreed to the *Australia's Winning Edge* Athlete Code of Conduct for an offer made between 1 July 2014 and 30 June 2018
- agreed to the AIS Athlete Code of Conduct for an offer made from 30 June 2018
- provided any evidence requested by the AIS or their NSO to confirm that they meet the eligibility criteria
- completed all online learning modules as required by the AIS; and
- entered into an Agreement that sets out the requirements of all dAIS recipients during the term of the agreement.

22. Athletes under the age of 18 must agree an expenditure plan for their dAIS grant with their NSO.

Agreement

23. In order to receive a dAIS grant, athletes are required to sign an Agreement.

24. The Agreement entitles the athlete to one payment. If the athlete is nominated by the NSO again in the future and the dAIS allocation is approved by the AIS, the athlete may enter into another Agreement and receive another payment under the new Agreement.

25. The 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) abide by both the rules and the spirit of my sport;
>
> (c) abide by all obligations that I owe to my NSO as a member of any team or squad of my NSO;
>
> (d) maintain the high standard of personal behaviour expected of an athlete representing Australia;
>
> (e) not bring myself, the ASC, my sport or my NSO into disrepute;
>
> (f) be available to compete for Australia in my sport, including at the Event;
>
> (g) not compete for a country other than Australia in my sport;
>
> (h) comply with the Anti-Doping Policies of the ASC, my sport's International Federation, and my NSO;
>
> (i) without limiting any other obligation under these grant conditions, comply with the Australia's Winning Edge Athlete Code of Conduct; and
>
> (j) if I am under 18 years of age, work with my NSO to develop and agree on an expenditure plan for my dAIS grant.
>
> ...
>
> 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 dAIS previously paid to me under this agreement;
>
> (b) if the ASC requires me to repay the dAIS grant 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

National Sporting Organisation responsibilities

26. NSOs are required to:

- nominate athletes to receive a dAIS grant by the deadline set by the AIS
- only nominate athletes who satisfy both the eligibility criteria and the performance considerations
- provide a copy of the athlete's individual performance plan or NSO Athlete Agreement, if requested by the AIS
- immediately notify the AIS if an athlete no longer satisfies the eligibility criteria, performance considerations or the terms of the Agreement
- work with athletes under the age of 18 to develop an expenditure plan for their dAIS grant, and
- not provide additional direct cash support to athletes without the prior consent of the AIS.

AIS Discretion

27. The AIS may, among other things and at its sole discretion:

- offer dAIS to an athlete under special consideration if an eligibility or performance requirement, or any other requirement set out in the Guidelines, cannot be met due to extenuating circumstances such as injury or illness
- amend any aspect of the Guidelines including (but not limited to) the grant amounts, eligibility criteria, performance considerations and timeline
- not offer dAIS to any athlete in a particular funding round, or
- cancel the scheme at any time.

Ruling

28. Grants received under dAIS are not assessable income for the purposes of section 6-5 or section 6-10.

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

Commissioner of Taxation
4 March 2015

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.

30. 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

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

32. 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.

33. In *Pipecoaters*,[1] 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.

34. Amounts that are periodical, regular or recurrent, and relied upon by the recipient for their regular maintenance 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 forgone or lost may also be ordinary income.[4]

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[1] *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; [1990] HCA 25; 90 ATC 4413; (1990) 21 ATR 1 at CLR 138; HCA [14]; ATC 4420; ATR 7.
[2] *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; [1952] HCA 65; (1952) 10 ATD 82; (1952) 5 AITR 443.
[3] *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.
[4] *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; [1952] HCA 65; (1952) 10 ATD 82; (1952) 5 AITR 443 at CLR 568; ATD 92; AITR 456, per Fullagar J.

35. 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 considered[6] and the motive of the payer may be relevant to this consideration.[7]

Employer/employee relationship

36. The relationship between an employer and an employee is a contractual one. Whether an athlete is an 'employee' must be considered from the totality of the relationship.[8]

37. The dAIS grant will be assessable income if it is paid by an employer, or by a third party, to the athlete in the athlete's capacity as an employee.[9]

38. Athletes in receipt of a dAIS grant are required to train and perform at a level that is considered as medal potential standard, abide by both the rules and spirit of their sport, be available to compete for Australia and not compete for a country other than Australia. Athletes are also required to adhere to the anti-doping policies of the ASC, their international federation and their NSO.

39. The Commissioner does not consider that these factors are sufficient to amount to an employer/employee relationship between the ASC and athletes. Indicators that support this conclusion include the fact that athletes set their own training schedule, must provide their own equipment and are not subject to the direction of ASC in relation to how they will go about participating in events.

40. The purpose of the dAIS grant is to provide financial support to athletes so that they can further develop their sporting talent. The grant is not made specifically so that athletes can participate in Olympics, Paralympics, Commonwealth Games or world championships, even though a natural incident of the financial support provided by the grant is to enable athletes to train, recover and compete.

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

[6] *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570; [1953] HCA 13; (1953) 5 AITR 496 at CLR 627; HCA [3], per Kitto J.

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

[8] *Stevens v. Brodribb Sawmilling Company Pty Ltd* (1986) 160 CLR 16 at 26, per Mason J.

[9] *Dean & Anor v. Federal Commissioner of Taxation* (1997) 78 FCR 140; 97 ATC 4762; (1997) 37 ATR 52 at ATC 4769; ATR 60; Reuter v. FC of T (1993) 111 ALR 716; 93 ATC 4037; (1993) 24 ATR 527 at ALR 730; ATC 4047; ATR 540.

41. It is concluded that the athletes do not receive dAIS grants in the capacity of employees.

Services rendered

42. The provision or rendering of services consists of the doing of an act for the benefit of another, which is more than the mere making of a contract and which goes beyond the performance of an obligation undertaken in the course of an ordinary commercial contract.[10]

43. Accordingly, an athlete will only be providing a service where they are undertaking an activity for the benefit of another party; usually this will be the payer. The provision of services includes, for example, the performing of specific administrative, technical or promotional services of direct benefit for the payers. Such payments are typically 'tied to' and 'based on' activities undertaken, or hours spent performing duties, that produce objective and tangible (often monetary) benefits for the payer.

44. The dAIS grant is paid to an athlete in recognition of their elite level within their sport and to assist them with event preparation rather than for performing any specific services for the benefit of ASC. Although the payment is made under a government policy in relation to an athlete's potential sporting accomplishments, this does not constitute a payment in respect of services rendered by an athlete.[11]

Substitution of income

45. The dAIS grant is not made in relation to any loss of income or profits of the athlete. Although there is a suggestion in the means test, which is a condition of the Agreement, that the athlete may be sacrificing income in order to commit to training and competition, there is no express purpose that the payment is made in substitution of income forgone. Furthermore, the quantum of the payment does not reflect income forgone. It is related to the value of the athlete's potential success from a government policy perspective.

Regular, periodic and relied upon for regular expenditure

46. The dAIS grant is a one off payment received by an athlete upon the signing of a six-month Agreement with ASC. Whilst an athlete can apply for support in a future period, the receipt of future grant payments is not assured. The terms of the Agreement provide for a single payment only. The fact that an athlete qualifies for a grant in one period does not automatically qualify them for any future grants. An athlete cannot rely on receipt of the grant in any future period. Therefore it cannot be said that a grant payment is part of periodic, regular or recurrent payments.

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[10] *Revesby Credit Union Co-operative Ltd & Lidcombe Credit Union Co-operative Ltd v. Federal Commissioner of Taxation* (1965) 112 CLR 564 at 578.
[11] *Stone v. Federal Commissioner of Taxation* [2002] FCA 1492; at [103].

47. Athletes are assessed against specific performance criteria in order to qualify for the dAIS grant, including being assessed on medal potential based on their performance at agreed benchmark events.

48. Although the means test implies some reliance on the payment to meet regular expenditure, the express purpose of the grant is to support and incentivise rather than to compensate the athlete for additional expenses incurred for training and competition.

Case law

49. In *Federal Commissioner of Taxation v. Stone*[12] the High Court found that the taxpayer was carrying on a business as a sportsperson in the relevant income years and that government grants received by the taxpayer were ordinary income from that business. As the class of persons to which this ruling applies excludes persons who carry on a business as a sportsperson, the decision in *Stone* does not directly apply.

50. In the Federal Court decision *Stone v Federal Commissioner of Taxation*[13] (*Stone*) Hill J found that the taxpayer was carrying on a business as a sportsperson. However, Hill J also considered whether the various grants received by the taxpayer would have been income under ordinary concepts if she had not been carrying on a business. These obiter dicta considerations were not disturbed by the High Court and provide guidance on whether, in the absence of a business, a grant to a sportsperson might be ordinary income.

51. The taxpayer in *Stone* received payments under three grant schemes. Under the first scheme, the Olympic Athlete Program, she received a grant in monthly instalments to assist with living expenses. Hill J found those payments to be ordinary income.[14] The two other schemes more closely resembled the dAIS grant under consideration: the AOC Medal Incentive Scheme and the Queensland Academy of Sport (QAS) grant scheme. In commenting on Hill J's findings in respect of these two schemes, the High Court stated:

> The primary judge found that [the QAS] payment was not income, unlike payments under the Medal Incentive Scheme which were. Of the payments under the Medal Incentive Scheme the primary judge said:
>
> > ... [T]hat having regard to the terms of the award, its periodicity and its purpose of encouraging athletes towards medal status it does have the character of income. And this is so, notwithstanding that the award was not the product of any employment or an incident of any employment or business.

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[12] *Federal Commissioner of Taxation v. Stone* (2005) 222 CLR 289; [2005] HCA 21; 2005 ATC 4234; (2005) 59 ATR 50.
[13] *Stone v. Federal Commissioner of Taxation* [2002] FCA 1492; 2002 ATC 5085; (2002) 51 ATR 297.
[14] *Stone v. Federal Commissioner of Taxation* [2002] FCA 1492; 2002 ATC 5085; (2002) 51 ATR 297 at [115].

By contrast, the primary judge said that the QAS grant:

> ... is in a different category in that it is not periodical in the sense which that word was used by the Full Court in *Harris....* I do not think that this amount can be seen to have been paid as consideration for being a member of the Australian Commonwealth games squad, in the sense that it constituted a product of some service rendered or some employment of [the taxpayer]. (emphasis added)

52. Hill J stated that the AOC grant lay 'on the border line of principle'[15] but found the payments to have been ordinary income; he had less difficulty in finding that the QAS grant payment, which was not periodic, was not ordinary income.

Conclusion

53. Considering the principles governing the characterisation of ordinary income and the guidance offered by *Stone*, the better view is that the dAIS grant, which is not periodic, is not income under ordinary concepts.

Statutory income

54. 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.

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

56. 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.

57. 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'.

58. 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 grant however these conditions do not amount to the rendering of services to the ASC.

59. Likewise, the grant is not paid for the rendering of services at any sporting event or for achieving a specified result but rather intended to provide athletes with support to assist with their training.

60. As such, grants received under dAIS are not assessable under section 15-2 because athletes are not considered to be employees, nor are they 'rendering services'.

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[15] *Stone v. Federal Commissioner of Taxation* [2002] FCA 1492; 2002 ATC 5085; (2002) 51 ATR 297 at [116].

Capital gains tax

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

62. 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.

63. 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 dAIS is such a scheme.

General deductions

64. As any dAIS grants received by athletes are not assessable income, all losses and outgoings that are incurred in connection with athletes' 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

65. As explained above, dAIS grants made to athletes are not assessable income. The grants 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 grants, 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

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

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)
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