


# ***CR 2021/100 - Australian Sports Commission - dAIS athlete grants***

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Status: **legally binding**

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## **Class Ruling**

# Australian Sports Commission – dAIS athlete grants

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### **📌 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences of payments made by the Australian Sports Commission (ASC) to individuals under the dAIS athlete grant scheme (the Scheme).
2. Full details of this scheme are set out in paragraphs 8 to 34 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997), unless otherwise indicated.

### **Who this Ruling applies to**

4. This Ruling applies to you if you are an individual who receives a grant from the ASC under the Scheme.

### **When this Ruling applies**

5. This Ruling applies from 1 July 2021 to 30 June 2026.

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## Ruling

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6. Athlete grants received under the Scheme are not assessable income for the purposes of sections 6-5 or 6-10.

7. 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).

## Scheme

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8. The following description of the Scheme is based on information provided by the applicant. If the Scheme is not carried out as described, this Ruling cannot be relied upon.

9. The ASC is a corporate Commonwealth entity and was established in 1985 under the *Australian Sports Commission Act 1989*.

10. The ASC comprises:

- Sports Australia, which is responsible for driving the broader sports sector including participation, supporting activities linked to sport and sport industry growth, and
- the Australian Institute of Sport (AIS), which leads Australia's high-performance sports system.

11. A revised Scheme was announced by the Australian Government as an extension to the Direct Athlete Support Scheme payments, which have been provided by the ASC since 1 July 2010.

12. The revised Scheme will be introduced to National Sporting Organisations (NSOs) as follows:

	Summer Olympic and Paralympic NSOs	Winter Olympic and Paralympic NSOs	Commonwealth Games-only NSOs
Revised Scheme Implementation	Post-2020 <sup>1</sup> Tokyo Olympic and Paralympic Games	Post-2022 Beijing Winter Olympic and Paralympic Games	Post-2022 Birmingham Commonwealth Games

13. The revised Scheme aims to provide athletes with direct financial support to enable them to focus on training and competitions to achieve the strategy targets in Olympic, Paralympic and Commonwealth Games sports.

## Performance obligations

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14. The value of the grant athletes are eligible to receive is based on each NSO's sport-specific application of the National Athlete Categorisation Framework, in which athletes are categorised against the criteria of:

- Podium
- Podium Ready

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<sup>1</sup> Postponed to 2021 due to COVID-19.

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- Podium Potential
- Developing, and
- Emerging.

15. The grant amounts, made in two equal payments, for Summer and Winter Olympic and Paralympic athletes are as follows:

	Annual grant amount	Amount of each payment
Podium	\$35,000	\$17,500
Podium Ready	\$23,000	\$11,500
Podium Potential	\$4,000 – \$12,000	\$2,000 – \$6,000
Developing	\$4,000 – \$12,000	\$2,000 – \$6,000
Emerging	\$4,000 – \$12,000	\$2,000 – \$6,000

16. Nominal grant amounts for Commonwealth Games-only athletes will be finalised for implementation post-Birmingham 2022 Commonwealth Games; however, the annual grant amounts for these athletes will not exceed the \$35,000 paid to Summer and Winter Olympic and Paralympic athletes.

### **Eligibility criteria**

17. To be considered for a dAIS athlete grant under the Scheme, an athlete must:

- be nominated by their NSO
- be categorised in accordance with the NSO sport-specific National Athlete Categorisation Framework
- be training to represent Australia in an Olympic, Paralympic or Commonwealth Games event/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 is endorsed by their NSO
- satisfy the dAIS means test (refer to the funding process at paragraph 23 of this Ruling)
- have a signed athlete agreement with their NSO and not be in breach of that agreement
- not be currently serving a sanction or provisional suspension for an anti-doping rule violation and/or not be in breach of an NSO integrity policy including Member Protection, Competition Manipulation & Sports Wagering, Misuse of Drugs and Medicines, and
- Paralympic athletes only – hold a review or confirmed status international classification (Paralympic athletes who do not hold an international classification should hold a national classification and be planning to seek international classification within an acceptable timeframe).

18. Prior to nominating for dAIS support, NSOs will be required to develop a sport-specific National Athlete Categorisation Framework, agreed by the ASC, to underpin

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the prioritisation and planning of support to athletes under the dAIS scheme. The NSO sport-specific athlete categorisation matrix, aligned to the National Athlete Categorisation Framework, should outline criterion for Podium, Podium Ready, Podium Potential, Developing and Emerging athletes that covers:

- performance criteria against each dAIS level
- annual benchmark events, world championships and other key selection events that may be considered as part of their assessment/reassessment process
- how the NSO will deal with team and relay athlete nominations for dAIS support
- any additional performance standards or progression benchmarks that athletes will need to meet at each Athlete Categorisation level to be nominated for dAIS support
- any qualifying criteria to assess the athlete's performances against the depth of competition at events being used for assessment
- any other non-performance-related factors that may be determining factors in the level of dAIS support offered
- associated policies for dAIS eligibility, including injury, illness, pregnancy and transition policies, and
- appeals process.

19. All NSOs are required to address, within their own sport specific National Athlete Categorisation Framework, associated policies to categorise athletes for dAIS eligibility with consideration of the following:

- short-term and long-term major injury and illness
- time away from competition
- transitioning into a sport from another, and
- pregnancy.

20. An athlete may be nominated for a full allocation of dAIS grant under an associated policy if they meet the requirements outlined in their NSO Associated Policy for dAIS eligibility, as agreed by the ASC.

21. If an NSO elects to nominate an athlete under an associated policy for dAIS eligibility, athletes will be supported as part of the allocation available to the NSO.

22. Athletes nominated for dAIS under an associated policy in two consecutive dAIS programs will not automatically qualify for dAIS support. The ASC will review nominations on a case-by-case basis and may require additional information from the NSO and/or athlete.

### **Funding process**

23. The funding process operates as follows:

- NSO dAIS nominations will take place once each financial year. Successful athletes will receive two dAIS payments each year.

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- At the beginning of the NSO's Pinnacle Event cycle, the ASC will advise (after consultation and agreement with the NSOs) the number of dAIS Podium and Podium Ready allocations, and a total dAIS athlete grant value for Podium Potential, Developing and Emerging allocations per financial year.
- Any adjustments to this Framework and Matrix must be agreed with the ASC before being applied.
- The ASC dAIS Nominations Review Panel (dAIS Panel) will review nominations against the relevant criteria and recommend eligible nominations to the Grant Delegate.
- The AIS Chief Executive Officer (CEO), as Grant Delegate, may accept the determinations of the dAIS Panel and approve payments to athletes or, if not accepted, refer the determinations back to the dAIS Panel for discussion with the relevant sport.
- NSOs will be notified by email of the outcome of their nominations, including
  - the name of the successful athletes awarded a dAIS athlete grant, and
  - the amount of the dAIS athlete grant awarded, including additional support for Transition or Dependents' Responsibility, if applicable.
- The AIS CEO, as Grant Delegate, may accept the determinations of the dAIS Panel and approve payments to athletes or, if not accepted, refer the determinations back to the dAIS Panel for discussion with the relevant sport.
- After notifications are sent to the NSOs, the ASC will notify the successful athletes by email of the outcome of their nominations including
  - the amount of the dAIS athlete grant awarded, including any additional support for Transition or Dependents' Responsibility, if applicable, and
  - the requirements and process for claiming the dAIS athlete grant.
- The payments are subject to means testing, which is based on an after-tax income threshold of \$70,000 per annum. Athletes exceeding this threshold will receive a reduced percentage of the dAIS Scheme allocation as per the table:

Income Band	Annual After-Tax Income range	Eligible % of dAIS Scheme
Band A	<= \$70,000	100%
Band B	\$70,001 – \$80,000	75%
Band C	\$80,001 – \$90,000	50%
Band D	\$90,001 – \$100,000	25%
Band E	>\$100,000	0%

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### **Additional support grants**

24. The ASC, at its discretion, may provide dAIS additional support grants to an athlete who is:
- transitioning out of competitive sport due to retirement or non-selection/categorised (dAIS Transition Support), or
  - experiencing financial hardship due to the athlete's responsibility for dependants, primarily children (dAIS Dependents' Responsibilities).
25. The ASC will consider nominations twice a year, in March and October.
26. To be eligible for dAIS Transition Support, an athlete must:
- be nominated by their NSO
  - prior to announcing retirement, be categorised as Podium, Podium Ready or Podium Potential within the sport-specific athlete categorisation matrix and be receiving dAIS support in the year prior to retirement/non-selection, and
  - have a transition plan in place with a member of the NSO's Athlete Wellbeing and Engagement team (or equivalent) and meet regularly, focussing on maintaining their wellbeing during the transition.
27. If an athlete is currently receiving dAIS grant under an associated policy related to transitioning from the sport, they may not be automatically qualified for dAIS Transition Support. The ASC will review nominations on a case-by-case basis and may require additional information from the NSO and/or athlete.
28. Eligible athletes will be provided with up to half (0.5) dAIS grant allocation, based on their most recent athlete categorisation level. Any funding provided is in addition to the NSO allocation.
29. If an athlete has received dAIS Transition Support and then decides to return to competitive sport within 12 months, the athlete may be required to return the funding provided and/or have future dAIS payments reduced by any dAIS Transition Support provided.
30. To be eligible for additional dAIS Dependents' Responsibilities, an athlete must be:
- nominated by their NSO, and
  - a categorised Podium or Podium Ready athlete.
31. A maximum top-up of \$10,000 per athlete per year will be considered. Any funding provided is in addition to the NSO allocation.
32. The dAIS additional support grants are subject to the same means testing listed under the funding process described in paragraph 23 of this Ruling.

### **Athlete responsibilities**

33. Athletes must meet the following requirements to claim the dAIS athlete grant:
- complete the following learning modules (which are mandatory even if the athletes have previously completed similar modules)
    - Sport Integrity Australia's anti-doping and anti-match fixing learning modules
    - AIS Athlete Code of Conduct learning module

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- dAIS means test audit learning module
- dAIS Athlete Agreement learning module
- agree to the AIS Athlete Code of Conduct
- confirm or accurately notify the ASC of the correct income band to ensure the eligible grant amount is accurate according to the dAIS means test
- accept a dAIS Athlete Agreement (if the athlete is under 18 years of age, their parent/guardian must co-sign the dAIS Athlete Agreement), and
- confirm or accurately notify the ASC of the current contact and bank account details for grant payments to be processed.

### The Athlete Agreement

34. 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 AIS and my sport's National Sporting Organisation (my NSO) as medal potential standard;
  - 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 AIS, 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 during the term of this agreement and for four years after the expiry or earlier termination of this agreement;
  - h. comply with anti-doping policies of the AIS, my sport's International Federation, and my NSO;
  - i. without limiting any other obligation under these grant conditions, comply with the AIS 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 of the warranties in clause 5 or breach any of the obligations in clause 6), the AIS may require me to repay to the AIS the dAIS grant previously paid to me under this agreement;
  - b. if my assessment of my income for the purposes of the Means Test results in payment of a dAIS grant beyond that which I am eligible for, the AIS may require me to repay to the AIS the amount that was over-paid;
  - c. if the AIS requires me to repay any part of the dAIS grant previously paid to me under this agreement, the AIS will give me written notice setting out the

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amount payable by me and that amount will be a debt due and payable by me to the AIS; and

- d. the AIS may exercise its right 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 AIS and me that I will not be deemed, for any purposes, to be an employee or agent of the AIS.

#### **When this Ruling does not apply**

35. This Ruling does not apply to individuals who receive a grant from the ASC under the Scheme and are carrying on a business as a professional sportsperson.

36. If you receive a grant from the ASC under the Scheme, and this Ruling does not apply to you, you should discuss your circumstances with your taxation adviser or the ATO.

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**Commissioner of Taxation**

22 December 2021

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## Appendix – Explanation

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**❶** *This Explanation 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.*

<b>Table of Contents</b>	<b>Paragraph</b>
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### **Payment is not included in assessable income**

37. A payment or other benefit received by a taxpayer is included in assessable income if it is:

- income according to ordinary concepts (ordinary income), or
- income by operation of the provisions of the tax law (statutory income).

### **Ordinary income**

38. Subsection 6-5(1) provides that an amount is included in assessable income if it is ordinary income.

39. The legislation does not provide specific guidance on the meaning of ordinary income. However, a substantial body of case law exists which identifies likely characteristics.<sup>2</sup>

40. Amounts that are periodic, regular or recurrent, relied upon by a recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income.<sup>3</sup>

41. Similarly, amounts that are the product in a real sense of any employment of, or services rendered by, the recipient are likely to be ordinary income.<sup>4</sup> Amounts paid in substitution for salary or wages forgone or lost may also be ordinary income.<sup>5</sup>

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<sup>2</sup> *GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth)* [1990] HCA 25.

<sup>3</sup> *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65 (*Dixon*).

<sup>4</sup> *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21 (*Hayes*); *Commissioner of Taxation of the Commonwealth of Australia v Rowe, Anthony John Poulston* [1995] FCA 834.

<sup>5</sup> *Dixon*.

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42. Ultimately, whether or not a particular amount is ordinary income depends on its character in the hands of the recipient.<sup>6</sup> The whole of the circumstances must be considered<sup>7</sup>, and the intention of the payer may be relevant.<sup>8</sup>

### ***Employment or services rendered***

43. The dAIS athlete grant is ordinary income if it is received by the athlete in their capacity as an employee or as consideration for any services rendered.

44. This is assessed by reference to the totality of the relationship between the ASC and each athlete<sup>9</sup> and whether the athlete has rendered or provided a specific service for the benefit of the ASC.<sup>10</sup>

45. While athletes in receipt of a dAIS athlete grant are subject to certain conditions such as training and performing at a 'medal potential standard' and abiding by the rules and spirit of their sport, they are also given a significant degree of control and flexibility in setting their own training schedules and providing their own equipment.

46. Athletes are not subject to the direction of the ASC in relation to how they will go about participating in events and the Athlete Agreement does not expressly contemplate the payment of any salary or wages to athletes in an employment capacity.

47. Having regard to the totality of the relationship between the ASC and athletes, the Commissioner considers that there is insufficient evidence of an employer/employee relationship. Accordingly, athletes do not receive the dAIS athlete grant in the capacity of employees.

48. Further, the purpose of the dAIS athlete grant is to provide financial support to athletes to assist them with event preparation and in recognition of their elite level within their sport. The grant is not made specifically as consideration for athletes participating in the Olympics, Paralympics, Commonwealth Games or other world championship events, or providing any other service to the ASC.

49. Although the payment is made under a government policy in relation to an athlete's potential sporting achievements, the Commissioner considers that this does not constitute a payment in respect of services rendered by an athlete.<sup>11</sup>

### ***Periodicity, regularity or recurrence***

50. The dAIS athlete grant comprises biannual payments received by an athlete upon the signing of an annual Athlete Agreement with the ASC. Athletes are assessed against specific performance criteria in order to qualify for the dAIS athlete grant, including being assessed on medal potential based on their performance at agreed benchmark events.

51. While an athlete can be nominated by their NSO for support in a future period, the receipt of future grant payments is not guaranteed. The terms of the Athlete Agreement

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<sup>6</sup> *Scott v Federal Commissioner of Taxation* [1966] HCA 48 (*Scott*); *Hayes; Federal Coke Company Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1977] FCA 29.

<sup>7</sup> *Squatting Investment Co Ltd v Commissioner of Taxation* [1953] HCA 13.

<sup>8</sup> *Scott*.

<sup>9</sup> *Stevens v Brodribb Sawmilling Co Pty Ltd* [1986] HCA 1; *ACE Insurance Ltd v Trifunovski* [2011] FCA 1204.

<sup>10</sup> *Revesby Credit Union Co-operative Limited and The Commissioner of Taxation for the Commonwealth of Australia* [1965] HCA 2; *Stone v Commissioner of Taxation* [2002] FCA 1492 (*Stone*); *Commissioner of Taxation v Stone* [2005] HCA 21.

<sup>11</sup> *Stone*.

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provide for two payments only. Moreover, the fact that an athlete qualifies for a grant in one period does not automatically qualify them for any future grants.

52. Therefore, the Commissioner considers that the dAIS athlete grant does not bear the characteristics of being periodic, regular or recurrent.

### **Substitution of income and reliance**

53. Although the express purpose of the dAIS athlete grant is to provide financial support to athletes and the means test implies some reliance on the payment to meet regular expenditure, the Commissioner considers that these factors are not by themselves decisive in characterising the dAIS athlete grant as ordinary income.<sup>12</sup>

54. Rather, the better view is that, having regard to the totality of the characteristics identified in paragraphs 43 to 53 of this Ruling, the dAIS athlete grant does not constitute ordinary income.

### **Conclusion**

55. For the reasons outlined in this Ruling, the Commissioner considers that the dAIS athlete grant received by individual taxpayers is not assessable under subsection 6-5(1) as ordinary income. Similar reasoning applies in respect of the dAIS additional support grants received by athletes.

### **Statutory income**

56. 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.

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

58. Subsection 15-2(1) 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.

59. While the athletes are not considered to be 'employees', subsection 15-2(1) also includes in assessable income those allowances, gratuities, compensation, benefits, bonuses and premiums which are paid in respect of 'services rendered'.

60. 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.

61. 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 or transition away from their sport in relation to the transition payments.

62. As such, the grants received under the dAIS scheme are not assessable under subsection 15-2(1) because athletes are not considered to be employees, nor are they 'rendering services'.

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<sup>12</sup> *The Commissioner of Taxation of the Commonwealth of Australia v Harris G.O.* [1980] FCA 74.

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### **Capital gains tax**

63. An athlete's entitlement to receive a dAIS athlete grant is a CGT asset under subsection 108-5(1) that is acquired when the grant is accepted.
64. 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.
65. 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**

66. As the dAIS athlete 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**

67. As explained in this Ruling, dAIS athlete 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.

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## References

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### *Previous draft:*

Not previously issued as a draft

### *Legislative references:*

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- ITAA 1997 6-5(1)
- ITAA 1997 6-10
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- ITAA 1997 104-25
- ITAA 1997 104-25(2)
- ITAA 1997 108-5(1)
- ITAA 1997 118-37(2)
- ITAA 1997 118-37(2)(a)
- TAA 1953 Sch 1 Div 12
- Australian Sports Commission Act 1989

### *Case references:*

- ACE Insurance Ltd v Trifunovski [2011] FCA 1204; 284 ALR 489
- Commissioner of Taxation (Cth) v Dixon [1952] HCA 65; 86 CLR 540; [1953] ALR 17; 10 ATD 82; 26 ALJ 505
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- Stone v Commissioner of Taxation [2002] FCA 1492; 51 ATR 297; 196 ALR 221; 2002 ATC 5085
- The Commissioner of Taxation of the Commonwealth of Australia v Harris G.O. [1980] FCA 74; 43 FLR 36; 80 ATC 4238; 10 ATR 869; 30 ALR 10

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### ATO references

NO: 1-RAR8FG1  
 ISSN: 2205-5517  
 BSL: IAI  
 ATOLaw topic: Income tax ~~ Assessable income ~~ Ordinary income  
 Income tax ~~ Assessable income ~~ Statutory income  
 Income tax ~~ Capital gains tax ~~ CGT assets ~~ general  
 Income tax ~~ Capital gains tax ~~ CGT events ~~ CGT events C1 to C3 - end of a CGT asset  
 Income tax ~~ Capital gains tax ~~ Exemptions ~~ Other  
 Income tax ~~ Exempt income ~~ Employment income ~~ Allowances and benefits

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# CR 2021/100

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