


# ***CR 2024/21 - The Ian Potter Cultural Trust - fellowships***

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Status: **legally binding**

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## **Class Ruling**

# **The Ian Potter Cultural Trust – fellowships**

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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 receiving the ‘Ian Potter Creative Fellowship’ or the ‘Ian Potter Emerging Performer Fellowship’ awarded by the Trustee for The Ian Potter Cultural Trust.
2. Details of this scheme are set out in paragraphs 7 to 47 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*.

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

4. This Ruling applies to you if you are a recipient of the:
  - Ian Potter Creative Fellowship, or
  - Ian Potter Emerging Performer Fellowship.

### **When this Ruling applies**

5. This Ruling applies from 1 January 2024.

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## **Ruling**

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6. The Ian Potter Creative Fellowships and the Ian Potter Emerging Performer Fellowships awarded by the Trustee for The Ian Potter Cultural Trust (The Ian Potter Cultural Trust) do not form part of the recipients' assessable income under either sections 6-5, 6-10, or 15-2.

## **Scheme**

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7. 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.

8. The Ian Potter Cultural Trust is a philanthropic foundation that was established to encourage and support diversity and excellence among emerging Australian artists. The Ian Potter Cultural Trust supports individuals who are passionate about their work and have the potential to be outstanding in their field.

9. The Ian Potter Cultural Trust is a registered charity with the Australian Charities and Not-for-profits Commission.

10. The Ian Potter Cultural Trust is endorsed by the Commissioner of Taxation as exempt from income tax and as a deductible gift recipient.

11. Commencing in 2024, The Ian Potter Cultural Trust will award the following fellowships to individuals:

- Ian Potter Creative Fellowships, or
- Ian Potter Emerging Performer Fellowships.

### **Ian Potter Creative Fellowships**

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12. The Ian Potter Creative Fellowships (Creative Fellowships) will be awarded to individual Australian artists, creatives, and cultural leaders in the humanities who have demonstrated outstanding talent and exceptional courage with respect to their artistic or cultural practice.

13. Two Creative Fellowships will be awarded to recipients nationally each year.

14. The Creative Fellowship is an unrestricted cash prize of a total of \$200,000 which is paid to each recipient over 2 years. The \$200,000 will be paid in 2 instalments of \$100,000 in each year. Specific outcomes for the fellowships are not required.

15. The Creative Fellowships focus on recognising outstanding talent and exceptional courage relating to the nominee's creative practice (illustrated through artistic challenges, daring innovation, breaking new ground, and redefining what is possible – Creative Practice). The fellowships are awarded in recognition of the outstanding achievement or contribution of the recipients.

16. The fellowships are not awarded in recognition of the achievement of a task or milestone or the creation of some product.

17. Artists, creators and cultural leaders across the spectrum of the visual, performing, interdisciplinary, new media and literary arts and the humanities are eligible for nomination.

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18. The criteria applicable to nominees for a Creative Fellowship are:
- The nominee must have demonstrated outstanding talent and exceptional courage in their Creative Practice.
  - The nominee must be in their early mid-career (at least 7 years into their Creative Practice).
  - The nominee must be an Australian citizen or permanent resident of Australia.
  - The nominee must primarily be a resident of Australia for the 2 years of their fellowship.
  - The nominee must be nominated by a third party. Self-nominations are not accepted.
  - The nominee must not have previously been awarded a Creative Fellowship. Former recipients of a Creative Fellowship are prohibited from being nominated again.
19. The selection process is a competitive one and not all nominations are successful.
20. The assessment of the merit of the nominations for the Creative Fellowships is made by a national Peer Review Panel which will recommend the highest-regarded nominations to The Ian Potter Cultural Trust for endorsement.
21. The 2 criteria used to select recipients are:
- outstanding talent shown by the nominee across the entire spectrum of the Creative Practice, and
  - exceptional courage shown by the nominee in their Creative Practice.
22. The criteria have regard to the nominee's Creative Practice as demonstrated by the type of work, the subject matter of the work (including any artistic challenges they faced), the artistic evolution of the Creative Practice and the ability to innovate and break new ground in the Creative Practice.
23. The fellowship is awarded for outstanding talent and courage, and not for outstanding work.
24. The Creative Fellowships do not consider the financial position of the nominee and are not awarded to surmount hardships (if any) of the nominees. The Peer Review Panel does not have regard to the personal circumstances of a nominee.
25. There are no conditions attached to how the cash prize can be spent by the recipients.
26. The cash prize is not received because of the recipients' employment or as recompense for services rendered. The recipients are not required to be employed or render services to anyone or any organisation.
27. The Creative Fellowships are not paid in relation to or for any service or benefits provided by the recipients to any person or organisation, including The Ian Potter Cultural Trust or entities associated with that trust.

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### **Ian Potter Emerging Performer Fellowships**

28. From 2024 to 2028 the Ian Potter Emerging Performer Fellowships (Emerging Fellowships) will be awarded annually. Ten Emerging Fellowships will be awarded in total. The Emerging Fellowships program is a collaboration between The Ian Potter Cultural Trust and the Australian National Academy of Music (ANAM). The program seeks to address a lack of support for musicians whose professional aspirations are not met by a traditional orchestral career.

29. Each year the Emerging Fellowships are awarded to ANAM alumni who have demonstrated a commitment to developing an independent performance or creative practice in music.

30. The Emerging Fellowship is an unrestricted cash prize of a total of \$100,000 which is paid to each recipient over 2 years (in the amount of \$50,000 per year). Payments of \$50,000 will be paid in February of each year.

31. Each recipient will also receive tailored mentoring, coaching and network development over the 2 years from ANAM's faculty of professional musicians. The mentoring support is not funded by The Ian Potter Cultural Trust. As part of the mentoring support, recipients will be required to submit a short acquittal at the end of each year, outlining activities that have been undertaken during the course of the year (this is not a condition of the awarding of the Emerging Fellowships).

32. The Emerging Fellowships seek to identify and nurture artists who display a demonstrated commitment to building independent creative practice that predominantly lies outside the traditional orchestral pathway.

33. The fellowships are not awarded in recognition of the achievement of a task or milestone or the creation of some product (for example, a piece of music).

34. The criteria applicable to nominees for an Emerging Fellowship are:

- The nominee must have completed at least 2 years training at ANAM.
- The nominee must have completed their formal music or music-related training either at ANAM or another Australian or international institution at least 2 years prior to the commencement of their fellowship.
- The nominee must be an Australian citizen or permanent resident of Australia.
- The nominee must be based in Australia for at least 8 months in each year of their fellowship, and any work created during the fellowship should be created predominantly in Australia but may have an international iteration.
- The nominee must not be employed full time by, or under an extended contract with, an orchestra or professional presenter or in any other full-time role while participating in the program (although may take on casual orchestral or other freelance work).
- There is no age limit for nominees.
- The nominee must have attained the highest level of technical and musical ability and display a commitment to developing an independent performance practice in the field of music.
- The nominee must not have previously been awarded an Emerging Fellowship. Former recipients of an Emerging Fellowship are prohibited from being nominated again.

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35. The nominee can self-nominate.
36. The prohibition of a nominee from being employed full time with an orchestra or musical presenter (or in any other full-time role), does not prohibit a nominee from working full time in another industry such as the hospitality industry or retail industry.
37. The nomination process comprises the provision of:
- 3 referees in support of the nominee
  - 2 recordings of recent musical performances
  - the nominee's curriculum vitae, including non-orchestral performance, teaching or other creative activities, in particular those initiated by the nominee, and
  - a written application by the nominee which addresses the nominee's
    - musical study and musical training to date
    - track record which displays an ongoing commitment to developing an independent performance practice, and
    - 3 to 5-year plan for their performance direction, including an outline of their immediate and medium-term goals (in developing an independent performance practice).
38. The application is not to include a list of activities, timelines, budgets or how the fellowship (if granted) will be spent.
39. The selection process is a competitive one and not all nominations are successful.
40. The assessment of the merit of the nominations for the fellowship is made by a panel comprising a representative of ANAM, a representative of The Ian Potter Cultural Trust and 2 external appointments. The panel judges the nominee's submissions by the following 3 criteria:
- a 3 to 5-year plan displaying a commitment to developing an independent performance practice in the field of music
  - a track record of activity that demonstrates a commitment to developing an independent performance practice in the field of music, and
  - attained the highest level of technical and musical ability.
41. The panel selects 2 nominees and the fellowships are announced by the Board of ANAM.
42. The criteria focus on the nominee's commitment to developing an independent performance practice over the next 3 to 5 years and their track record to date in displaying a commitment to developing an independent performance practice in music.
43. The Emerging Fellowships do not consider the financial position of the nominee and are not awarded to surmount hardships (if any) of the nominees.
44. The panel does not have any regard for the nominee's personal circumstances, including their financial circumstances or how the funds will be spent. Detailed plans or budgets are not required as part of the application process.

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45. The cash prize is not tied funding, and there are no conditions attached to how the cash prize is spent by the recipient except that it cannot be used to fund domestic or international study. The use of the cash prize is otherwise unrestricted and can be used as the recipient sees fit. The cash prize is not intended to be spent on a particular activity and is not intended to achieve a particular activity.

46. The cash prize is not received because of the recipients' employment or as recompense for services rendered. The recipients are not required to be employed or render services to anyone or any organisation.

47. The Emerging Fellowships are not paid in relation to or for any service or benefits provided by the recipients to any person or organisation, including The Ian Potter Cultural Trust, ANAM or entities associated with these entities.

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**Commissioner of Taxation**

27 March 2024

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 Status: **not legally binding**


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## Appendix – Explanation

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**ⓘ** *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.*

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### Ordinary income

48. A payment or other benefit received by a taxpayer is included in 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 tax law is included in assessable income (statutory income).

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

50. The legislation does not provide specific guidance on the meaning of income according to ordinary concepts, however there is a substantial body of case law that identifies likely characteristics.

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

- how, in what capacity, and for what reason the recipient received the prize or gift<sup>1</sup>
- whether the prize or gift is of a kind which is a common incident of the recipient's calling or occupation<sup>2</sup>
- whether the prize or gift is made voluntarily
- whether the prize or gift is solicited<sup>3</sup>
- whether the prize or gift can be traced to gratitude engendered by some service rendered by the recipient to the prize or gift donor<sup>4</sup>

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<sup>1</sup> *Squatting Investment Co Ltd v Federal Commissioner of Taxation* [1953] HCA 13 (*Squatting Investment*).

<sup>2</sup> *Scott v Federal Commissioner of Taxation* [1966] HCA 48 (*Scott*).

<sup>3</sup> *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21 (*Hayes*) and *Scott*.

<sup>4</sup> *Squatting Investment*.



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- the motive of the prize or gift donor (though this factor is rarely decisive in itself)<sup>5</sup>, and
- whether the recipient relies on the prize or gift for regular maintenance of themselves and any dependants.<sup>6</sup>

### ***Ian Potter Creative Fellowships***

52. The Creative Fellowships are awarded to recipients in their early mid-career who have demonstrated outstanding talent and exceptional courage in their Creative Practice. The fellowships recognise the outstanding achievement or contribution of the recipients. The selection process is competitive and recipients are selected based on merit. A recipient must be nominated by a third party.

53. The Creative Fellowships are not paid in connection with any employment or services rendered by the recipients and are not paid to the recipients for the achievement of a task or milestone or the creation of a product. The fellowships are voluntarily given by The Ian Potter Cultural Trust and are provided in accordance with its philanthropic purposes. The recipients can only be awarded the fellowship once. It is accepted that a fellowship is not a common incident of the recipients' calling or occupation, but rather is an exceptional recognition of the recipients' outstanding achievement and contribution to art.

54. The financial position of the nominees is not considered in awarding the Creative Fellowships, and there are no conditions on how the fellowships can be spent by the recipients. The recipients receive the fellowships in addition to their income, and it is accepted that the fellowship is not relied upon by a recipient for their regular maintenance.

55. In these circumstances, it is accepted that the Creative Fellowships are not ordinary income of the recipients and do not form part of the recipients' assessable income under section 6-5.

### ***Ian Potter Emerging Performer Fellowships***

56. The Emerging Fellowships are awarded to ANAM alumni who have dedicated themselves to develop an independent creative practice in music which is outside the traditional orchestral pathway and have an ongoing commitment to developing an independent performance practice. The selection process is competitive and recipients are selected based on merit.

57. The Emerging Fellowships are not paid in connection with any employment or services rendered by the recipients and are not paid to the recipients for the achievement of a task or milestone or the creation of a product. The recipients are required to submit a short acquittal at the end of each year of the fellowship as part of the mentoring program, but it is not a condition of the fellowships. The fellowships are voluntarily given by The Ian Potter Cultural Trust and are provided in accordance with its philanthropic purposes. The recipients can only be awarded the fellowship once. It is accepted that the fellowship is not a common incident of the recipients' calling or occupation, but rather is an exceptional recognition of the recipients' independent creative practice in music.

58. The financial position of the nominees is not considered in awarding the Emerging Fellowships, and there are no conditions on how the fellowships can be spent by the recipients, except that they cannot be used to fund study. It is a requirement of the

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<sup>5</sup> *Hayes*.

<sup>6</sup> *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65 and *The Commissioner of Taxation of the Commonwealth of Australia v Stanley Herbert Blake* [1984] QSC 381.

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fellowships that the recipients must not be employed full time by an orchestra or professional presenter but the recipients can have full-time employment in an industry outside of music (for example, hospitality or retail) and can take on casual orchestral or other freelance work. The recipients receive the fellowships in addition to their income, and it is accepted that the fellowship is not relied upon by a recipient for their regular maintenance.

59. In these circumstances, it is accepted that the Emerging Fellowships are not ordinary income of the recipients and do not form part of the recipients' assessable income under section 6-5.

### **Statutory income**

60. Section 6-10 includes in assessable income amounts that are not ordinary income. These amounts are statutory income. A list of the statutory income provisions can be found in section 10-5. That list includes a reference to section 15-2.

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

Your assessable income includes the value to you of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to you in respect of, or for or in relation directly or indirectly to, any employment or services rendered by you ...

62. The main issue to consider with respect to subsection 15-2(1) is whether the cash prize is '... provided to you in respect of ...any employment of or services rendered ...'.

### ***Ian Potter Creative Fellowships***

63. The Creative Fellowships are paid to recognise the outstanding achievement or contribution of the recipients to art and is not a product of the recipients' employment. It is a reward for the recipients' talent and courage in their relevant artistic field or creative practice.

64. The Creative Fellowships also do not require any specific outcomes. There is no agreement or expectation that recipients provide or supply services to The Ian Potter Cultural Trust or an associated entity, and the fellowships are not paid for the achievement of a task or milestone or the creation of a product. To receive a fellowship, recipients are required to meet 2 criteria – outstanding talent and exceptional courage. These criteria do not amount to the rendering of services to The Ian Potter Cultural Trust or an associated entity.

65. The Creative Fellowships will not be included as assessable income under section 15-2 as the fellowships are not provided to the recipients in respect of any employment or for services rendered by the recipients. The Creative Fellowships are not statutory income for the purposes of section 6-10.

### ***Ian Potter Emerging Performer Fellowships***

66. The Emerging Fellowships are paid to ANAM alumni who have dedicated themselves to develop an independent creative practice in music which is outside the traditional orchestral pathway and have an ongoing commitment to developing independent performance practice. It rewards the independent creative practice of the recipients and is not a product of the recipients' employment.

67. The Emerging Fellowships also do not require any specific outcomes. There is no agreement or expectation that recipients provide or supply services to The Ian Potter

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Cultural Trust or an associated entity, and the fellowships are not paid for the achievement of a task or milestone or the creation of a product. To receive a fellowship, recipients are required to display a commitment to developing an independent performance practice and must have attained the highest level technical and musical ability. These criteria do not amount to the rendering of services to The Ian Potter Cultural Trust or an associated entity.

68. The Emerging Fellowships will not be included as assessable income under section 15-2 as the fellowships are not provided to the recipients in respect of any employment or for services rendered by the recipients. The Emerging Fellowships are not statutory income for the purposes of section 6-10.

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## References

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### *Legislative references:*

- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 15-2(1)

### *Cases relied on:*

- The Commissioner of Taxation of the Commonwealth of Australia v Stanley Herbert Blake [1984] QSC 381; [1984] 2 Qd R 303; 75 FLR 315; 84 ATC 4661; 15 ATR 1006
  - Commissioner of Taxation (Cth) v Dixon [1952] HCA 65; 86 CLR 540; [1953] ALR 17; 10 ATD 82; 26 ALJR 505
  - Hayes v Commissioner of Taxation (Cth) [1956] HCA 21; 96 CLR 47; 11 ATD 68; 30 ALJR 96
  - Scott v Federal Commissioner of Taxation [1966] HCA 48; 117 CLR 514; 40 ALJR 205; [1967] ALR 561; 14 ATD 286
  - Squatting Investment Co Ltd v Federal Commissioner of Taxation [1953] HCA 13; 86 CLR 570; [1953] ALR 366; 26 ALR 658; 10 ATD 126
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### ATO references

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