



# ***CR 2003/104 - Income Tax: assessable income: payments received for out of pocket expenses of companions to Disability Services Commission (WA) clients***

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 This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in IR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

 This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*



## Class Ruling

Income Tax: assessable income: payments received for out of pocket expenses of companions to Disability Services Commission (WA) clients

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### **Preamble**

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains **Class Rulings** and **Taxation Rulings** TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

## What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

### **Tax law(s)**

2. The tax laws dealt with in this Ruling are sections 6-5, 6-10, 8-1 and 10-5 of the *Income Tax Assessment Act 1997* (ITAA 1997) and paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936).

### **Class of persons**

3. The class of persons to whom this Ruling applies are individuals who undertake the role of a Companion under the direction of the Accommodation Services Directorate ('ASD'), which is part of the Disability Services Commission ('DSC'), controlled by the Government of Western Australia.

### **Qualifications**

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 9 to 20 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- b) this Ruling may be withdrawn or modified.

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## **Date of effect**

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8. This Ruling applies from 1 October 2003. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the Gazette;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

## **Arrangement**

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9. The arrangement that is the subject of the Ruling is described below.

10. The ASD promotes and facilitates the development of a partnership with their clients (being people classified as having a Decision Making Disability) and their families, friends and the community to :

- enable and support their clients to develop a balanced and quality lifestyle;
- enable their client's community participation, inclusion and acceptance; and
- create and sustain a home environment for their clients which recognises and responds to the person's individual and changing needs.

11. The DSC's 'Linking with the Community' program provides for their clients to engage the support of a companion to assist them to participate and be included in community activities. The companion is a volunteer and receives no payment for their time. The role of the companion is complementary to the role of the DSC's employees and is not a replacement for the role of the DSC employees. The companion is not an employee of the DSC.

12. The DSC currently has 122 people carrying out the role of a companion. Ninety two (92) percent of the companions have one client only per week. Some companions have one client per fortnight; some have one client per month and some may have one client per quarter.

13. The policy of the DSC is that companions can provide support to no more than 2 clients and to a maximum of one activity per client per week.

14. It is expected that the companion will incur some out of pocket expenses when with the client. The client is expected to pay their companion for their out of pocket expenses.

15. ASD has chosen to adopt a formula, with the exception of the circumstances described in paragraph 20, to determine the amounts payable by the client to the companion. ASD considers that this is the best way to protect and support their client's interests given that:

- Their clients are highly vulnerable to exploitation and it is a primary duty of care of the DSC to ensure that each client is protected, this includes safeguarding their finances.
- Many of the clients supported by the DSC have limited or no understanding of their financial affairs. The specification of an average cost that is consistent makes the process of explaining and teaching each client to understand their financial commitments easier.

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- A key role undertaken by the DSC is to support clients to budget their finances on a daily, weekly, monthly and annual basis. The process of supporting and teaching this is made possible by using a consistent amount.

16. The ASD formula which applies in relation to a companion supporting one client is:

<b>Duration of activity</b>	<b>2 hours</b>	<b>3 hours</b>	<b>4 hours</b>	<b>5 hours</b>	<b>6 hours</b>
<b>Total Payment to companion</b>	\$33	\$35	\$40	\$57	\$59

17. The ASD formula which applies in relation to a companion who supports two clients consecutively on the same day is:

<b>Duration of activity</b>	<b>2 hours each</b>	<b>2 &amp; 3 hours</b>	<b>2 &amp; 4 hours</b>	<b>3 hours each</b>
<i>Discounted cost to client 1</i>	\$26	\$30	\$30	\$34
<i>Discounted cost of client 2</i>	\$26	\$34	\$38	\$34
<b>Total Payment to companion</b>	\$52	\$64	\$68	\$68

18. The formula includes components for the following:

- the companion using their vehicle to travel to and from the meeting point with the client (usually the client's home). This is calculated on a distance of 10 km @ 48.7 cents per km;
- the companion using their vehicle to transport the client to his/her community activity. This is calculated on a distance of 16 km if the duration of the activity is 5 hours or less increasing to 20 km if the duration exceeds 5 hours;

- coffee or drink costs for the companion after the first hour at a rate of \$2.50 an hour;
- light meals and drink costs where the duration of the activity is between 4 and 6 hours at a rate of \$5 per hour; and
- a contribution to entry fees at a rate of \$5 per client per week.

19. The rates adopted in the formula were derived from an analysis of actual reimbursements for companion costs undertaken by ASD. The rates are designed to ensure that over a period of time a companion would not be out of pocket nor would they receive payment in excess of their expenditure.

20. The formula will not be used where the duration of the activity, whether with one or two clients, exceeds 6 hours. In these circumstances the payment to be made is for the actual costs incurred by the companion for the full duration of the activity.

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21. Volunteers carrying out the role of a companion under the direction of the Accommodation Services Directorate (ASD), which is part of the Disability Services Commission (DSC), receiving payments in the nature of reimbursement for their out of pocket costs, both under the formula and for actual costs, will not be assessed on that reimbursement under either section 6-5 of the ITAA 1997 or paragraph 26(e) of the ITAA 1936.

22. Any losses and outgoings incurred by the companion are not incurred in earning their assessable income and therefore are not deductible under section 8-1 of the ITAA 1997.

## **Explanation**

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23. A payment received by a taxpayer is assessable income if it is:
- income according to ordinary concepts (*ordinary income*); or
  - an amount that through the operation of the provisions of the tax law is included in assessable income (*statutory income*).

**Ordinary Income**

24. Under subsection 6-5(1) of the ITAA 1997 an amount is assessable income if it is income according to ordinary concepts.

25. In determining whether an amount is ordinary income, the courts have established the following principles:

- what receipts ought to be treated as income must be determined in accordance with the ordinary concepts and usages of humankind, except in so far as a statute dictates otherwise;
- whether the payment received is income depends upon a close examination of all relevant circumstances; and
- whether the payment received is income is an objective test.

26. Relevant factors in determining whether an amount is ordinary income include:

- whether the payment is the product of any employment, services rendered, or any business;
- the quality or character of the payment in the hands of the recipient;
- the form of the receipt, that is, whether it is received as a lump sum or periodically; and
- the motive of the person making the payment. Motive, however is rarely decisive as in many cases a number of motives may exist.

27. It is necessary to look at these factors in the context of the companion's circumstances. Whether the payments that have been received by the companion were for services rendered must be examined. Paragraph 3 of Taxation Ruling IT 2639 looks at the meaning of 'income from personal services' and states that:

'income from personal services' is income that an individual taxpayer earns predominantly as a direct reward for his or her personal efforts by, for example, the provision of services, exercise of skills or the application of labour. The inclusion of predominantly in this definition allows for the situation where personal services involve the use of some equipment, for example the drawing board of an architect.

28. The companion is not paid any amount for their time or to reward them for any services they provide for the client. They are volunteering their time as a companion without any expectation of any monetary reward.

29. The payments the companion receives are intended to defray some of the costs they have incurred in acting as a companion. The quality and character of the payment in the hands of the companion is that of reimbursement of the out of pocket expenses they have incurred.

30. The timing of the payments received by the companion will vary according to whether they are a companion to one or two clients. It will also depend on the number, timing and duration of the activities they undertake with these clients. It is accepted that there is unlikely to be a regular pattern of payments received by the companion.

31. Given the discussion in paragraphs 24 to 30 it is considered that the payments received by the companion do not possess the characteristics of ordinary income. They are not payments for services rendered rather they are more in the nature of a reimbursement received for the amounts expended in acting as a companion for the client. The payments received are not incurred according to ordinary concepts and therefore are not assessable as ordinary income under section 6-5 of the ITAA 1997.

### **Statutory Income**

32. Amounts which are not ordinary income but considered assessable income under the relevant provisions are called Statutory Income, as defined in section 6-10 of the ITAA 1997. The Note to section 6-10 provides that a summary list of the relevant provisions relating to assessable income can be found in section 10-5 of the ITAA 1997.

33. The heading 'employment' under section 10-5 contains a subheading 'allowances and benefits in relation to employment or rendering services' with a reference to paragraph 26(e) of the ITAA 1936. Paragraph 26(e) provides that a taxpayers assessable income will include:

...allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by him...

34. The difference between an 'allowance' and 'reimbursement' is discussed in Taxation Ruling TR 92/15. Paragraph 2 in describing the characteristics of an allowance states;

...a payment is an allowance when a person is paid a definite predetermined amount to cover an estimated expense. It is paid regardless of whether the recipient incurs the expected expense. The recipient has the discretion whether or not to expend the allowance.

Paragraph 3 of TR 92/15 discusses 'reimbursement' and states;

A payment is a reimbursement when the recipient is compensated exactly (meaning precisely, as opposed to approximately) whether wholly or partly, for an expense already incurred although not necessarily disbursed ...

35. The payments in the circumstances described in this Ruling have been made after the companion has incurred the expenses. They are not payments made in relation to an expected expense. The payments are made on an 'average' rate of expenditure basis rather than an actual expense basis, other than for those occasions when the activity's duration exceeds 6 hours. The average rate basis has been used because it is regarded as the best way to support and assist the clients in managing their finances. The expectation is that the payments will put the companion in a position where they will not be 'out of pocket' but nor will they receive more than they have expended. On balance, in the circumstances described in this Ruling the payments are more correctly treated as being a reimbursement of expenses rather than an allowance.

36. The reimbursement is not caught by any of the other types of receipts listed in paragraph 26(e) of the ITAA 1936. Therefore the payments received by the companion, as reimbursement of their out of pocket expenses, are not assessable under paragraph 26(e) of the ITAA 1936.

## **Detailed contents list**

37. Below is a detailed contents list for this Class Ruling:

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**Commissioner of Taxation**26 November 2003

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*TR 92/1; TR 92/20; TR 97/16;  
TR 92/15; CR 2001/1; IT 2639*Subject references*

- allowances
- assessable income

*Legislative references:*

- TAA 1953 Pt IVAAA
- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5 (1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
- Copyright Act 1968

## ATO references

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