


CR 2003/71 - Income tax: Science Prize: The Australian Council of Deans of Science University Science Teaching Prize

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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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: Science Prize: The Australian Council of Deans of Science University Science Teaching Prize

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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 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 which this Ruling applies is winners of The Australian Council of Deans of Science (ACDS) University Science Teaching Prize.

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 actually carried out is carried out in accordance with the arrangement described below at paragraphs 9 to 20 in this Ruling.

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

- (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

8. This Ruling applies from 1 July 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 and 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

9. The arrangement that is the subject of this Ruling is described below. This description is based on the documents listed below. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- application for Class Ruling dated 19 June 2003; and
- e-mails from the representative of the applicant on 9, 10 & 15 July 2003.

10. The ACDS is a national body which represents Deans of Faculty, Heads or Deans of School, Heads of Department and others who hold senior positions of responsibility for science in Australian universities. Its purpose is to promote the development of science through study and research in those universities.

11. The ACDS, with funding support provided by the Department of Education Science and Training, is to offer a prize to be known as 'The Australian Council of Deans of Science University Science Teaching Prize' (the Prize). The Prize will recognise a Scientist who has made an outstanding contribution to science education in Australia. The \$30,000 Prize will be awarded annually.

12. The Prize will be awarded to a Scientist who has made an outstanding contribution in science education in any of the following areas:

- mathematical sciences;
- physical sciences;
- chemical sciences;
- earth sciences;
- information, computer and communication technologies;
- applied sciences and technologies;
- biological sciences; and
- psychology.

13. Eligibility for the Prize is limited to Australian citizens or those who hold permanent resident status in Australia. Candidates must have a demonstrable link to Australia and should be active in science education at Tertiary level at the time of their nomination.

14. Nominations for the Prize will be adjudicated by the ACDS University Science Teaching Prize Committee (the Committee) which will make recommendations on the recipient of the Prize.

15. The Committee will be managed by the ACDS and will comprise three members of the Executive of the ACDS, a representative from the Department of Education Science and Training, a nominee of the Australian Academy of Science, and a nominee of the Australian Academy of Technological Sciences and Engineering.

16. Nominations will be sought from individuals who must be personally knowledgeable of the professional work of the nominee and they must submit an opinion on the worth of the achievement of the nominee by addressing the following selection criteria:

- Knowledge of science in at least one discipline area informed by the nominee's leading edge research and an ability to impart that knowledge to students;
- Innovative and imaginative approaches in working with their students to achieve high quality learning outcomes in science; and
- Commitment to improvement and active involvement as a member of their professional community.

17. Nominations for the Prize will be sought by advertising in a national newspaper and Tertiary Institutions will be contacted at the level of Vice Chancellor and Dean.

18. The winner is expected to attend the presentation ceremony in Canberra at the expense of the ACDS. The winner is also expected to assist the ACDS, through publicity, to boost interest in University science teaching.

19. It is anticipated that the Prize will be awarded for the first time in 2003. If there is more than one winner in any one year, the prize money would be divided equally between the winners.

20. The Committee reserves the right not to recommend an award in any year.

Ruling

21. The ACDS University Science Teaching Prize is not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

Explanation

22. A payment or other benefit 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

23. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included as assessable income if it is income according to ordinary concepts (ordinary income).

24. 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 *Squatting Investment Co Ltd v. Federal Commissioner of Taxation* (1953) 86 CLR 570; (1953) 5 AITR 496; (1953) 10 ATD 126 (*Squatting Investment Case*);
- whether the prize or gift is of a kind which is a common incident of the recipient's calling or occupation *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 10 AITR 367; (1966) 14 ATD 286 (*Scott's Case*);
- whether the prize or gift is made voluntarily;
- whether the prize or gift is solicited *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; (1956) 6 AITR 248; (1956) 11 ATD 68 (*Hayes' Case*) and (*Scott's Case*);
- whether the prize or gift can be traced to gratitude engendered by some service rendered by the recipient to the prize or gift donor (*Squatting Investment Case*);
- the motive of the prize or gift donor (though this factor is rarely decisive in itself) (*Hayes' Case*); and
- whether the recipient relies on the prize or gift for regular maintenance of themselves and any dependants *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 5 AITR 443; (1952) 10 ATD 82 (*Dixon's Case*) and *FC of T v. Blake* (1984) 75 FLR 315; (1984) 15 ATR 1006; 84 ATC 4661.

25. The ACDS University Science Teaching Prize is of an exceptional kind, awarded to the recipient for excellence in University science teaching.

26. Having regard to the nature of the Prize, the character of the payments in the hands of the recipient is such that it is not received by virtue of employment or as a recompense for services rendered, even though the Prize is made in relation to an achievement or contribution that is related to the vocation of the individual recipient. The nature of the award is that of a personal windfall or gain not having the qualities of income¹.

27. The Prize is not a common incident of the income earning activities of the Scientist to whom this Ruling applies. While not a determinative factor, the fact that Scientists eligible to receive the Prize cannot self nominate is an indicator that receipt of the Prize is not an incident of employment in science education at Tertiary level. A further indicator that receipt of the Prize is not in respect of the Scientist's employment is that the members of the ACDS University Science Teaching Prize Committee are independent of the employer of a nominated Scientist.

Statutory income

28. Section 6-10 of the ITAA 1997 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included in assessable income by another provision. Section 10-5 of the ITAA 1997 lists those provisions. Included in this list and of relevance to this matter is paragraph 26(e) of the ITAA 1936.

29. Paragraph 26(e) of the ITAA 1936 provides that the value to the taxpayer of all gratuities and benefits given or granted to them in respect of, or for or in relation directly or indirectly to, any employment will be included in their assessable income. An issue in this arrangement is whether the Prize was granted 'in relation directly to or indirectly to, employment ...'. In particular, whether the Prize was granted 'indirectly' in relation to the employment of the recipient of the Prize.

30. The leading cases in connection with this arrangement are *Dixon's Case* and *Scott's Case*. In both cases, it was decided that the phrase 'an indirect consequence of employment' was not an open ended concept. Rather, there must still be a connection between the payment and the employment such that the receipt 'is in a relevant sense a product' of the employment.

¹ This is consistent with the approach taken in IT 2145 which deals with the question of whether BHP Awards for the Pursuit of Excellence are assessable income in the hands of the recipients

31. The Prize cannot be regarded in a real sense as a product of the employment of any recipient. Nor is it a benefit provided for services rendered. The value of the Prize is therefore not assessable under paragraph 26(e) of the ITAA 1936.

Conclusion

32. As the Prize received by the Scientists to whom this ruling applies does not constitute either ordinary or statutory income, it is not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

Detailed Contents List

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Commissioner of Taxation

27 August 2003

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; IT 2145

Subject references:

- exempt income
- prizes and awards
- windfall gains

Legislative references:

- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 10-5
- TAA 1953 Part IVA
- Copyright Act 1968

- Scott v. FC of T (1966) 117 CLR 514; (1966) 10 AITR 367; (1966) 14 ATD 286.
- Hayes v. FC of T (1956) 96 CLR 47; (1956) 6 AITR 248; (1956) 11 ATD 68.
- FC of T v. Dixon (1952) 86 CLR 540; (1952) 5 AITR 443; (1952) 10 ATD 82.

Case references:

- Squatting Investment Co Ltd v. FC of T (1953) 86 CLR 570; (1953) 5 AITR 496; (1953) 10 ATD 126.

- FC of T v. Blake (1984) 75 FLR 315; (1984) 15 ATR 1006; 84 ATC 4661.

ATO references

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