CR 2004/81 - Income tax: assessable income: assessability of a Matched Savings Payment received under the ANZ - Brotherhood of St. Laurence pilot Saver Plus Program

This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2003*

Class Ruling

Income tax: assessable income: assessability of a Matched Savings Payment received under the ANZ – Brotherhood of St. Laurence pilot Saver Plus Program

Contents Para

Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **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 law(s)' 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 law(s) dealt with in this Ruling are:

- Section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- Section 6-10 of ITAA 1997;
- Section 6-15 of 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 are the individuals who participate in the ANZ – Brotherhood of St. Laurence pilot Saver Plus Program (SP Program) as described in the Arrangement part of this Ruling. In this Ruling these persons are referred to as 'Participants'.

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 in paragraphs 10 to 17.

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

- 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
- this Ruling may be withdrawn or modified.

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 a 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.

Withdrawal

9. This Class Ruling is withdrawn and ceases to have effect after 30 June 2005. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified arrangement during the term of the Ruling. Thus the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no material difference in the arrangement or in the persons' involvement in the arrangement.

Arrangement

10. The arrangement that is the subject of this Ruling is described below. This description is based on the following documents:

- Application for Class Ruling dated 20 February 2004;
- ANZ Group Community Relations Partner Agreement between:
    - Australia and New Zealand Banking Group Limited and Brotherhood of St Laurence for the period 1 July 2003 until 30 June 2005;
    - Australia and New Zealand Banking Group Limited and Berry Street Victoria Incorporated for the period 1 October 2003 until 30 June 2005;
    - Australia and New Zealand Banking Group Limited and The Benevolent Society for the period 1 October 2003 until 30 June 2005;
- Saver Plus Program Rules – Acceptance Agreement;
- Saver Plus Goal & Activity Agreement; and

- Saver Plus Informed Consent Agreement.

11. The SP Program was set up by the Brotherhood of St Laurence (BSL) and Australia and New Zealand Banking Group Limited (ANZ) to develop an asset building program. The asset building program provides Participants with a payment (referred to as a Matched Savings Payment (MSP)) to assist low income earners acquire education related products and services for their children, develop financial skills and establish a savings habit.

12. The SP Program will be run in three separate communities for the period 1 July 2003 until 28 February 2005. This program will be managed and coordinated by the BSL. The pilot programs will be run in Frankston by BSL, in Shepparton by Berry Street Victoria Incorporated and in Campbelltown by The Benevolent Society. Collectively they are known as the "Charitable Partners".

13. A research program will run concurrently and evaluate the effectiveness of the program in achieving its stated aims. Participation in the research program by the SP Program Participants is voluntary. Depending on the results of the research program, a wider implementation of the program may be considered.

SP Program Eligibility

14. To be eligible to become a Participant of the SP Program, an individual's family circumstances must satisfy certain criteria:

- Be a parent or a guardian of a student/s in secondary school at the end of the savings period;
- Have children attending Government schools;
- Have a current Commonwealth Health care or Pension Card;
- Have regular income from paid employment and can produce 2 recent pay slips; and
- Be able to demonstrate a capacity to save after regular expenses have been paid.

15. The eligibility of a Participant will be assessed on an individual basis. The Charitable Partners will select the program Participants.

Matched Savings Payment Requirements

16. Once selected to participate in the SP Program, the Participants must satisfy all the requirements of the SP Program in order to receive the MSP. These requirements involve:

- Making regular contact with a Relationship Manager (employed by the Charitable Partners).
- Completing personal finance and money management training, which is offered by the Relationship Manager.

- Opening an ANZ Progress Saver Account (if the participant does not have an existing ANZ Progress Saver Account). Existing ANZ Progress Saver Accounts can be used for the SP Program, if they are in the Participants name.
- Making regular and consistent deposits into ANZ Progress Saver Account in accordance with savings targets agreed in the Saver Plus Goal and Activity Agreement.
- Participating in the SP Program for the agreed period.

Operation of the SP Program

17. The SP Program operates as follows:

- Participants establish a savings goal for optional educational related products or services, such as a new school uniform or home computer. Saving to cover regular education expenses, such as school enrolment fees, will not be eligible.
- Participants make regular and consistent deposits into an ANZ Progress Saver Account over the program savings period. The savings period for the pilot program will be 1 July 2003 onwards until 31 December 2004.
- If the Participants satisfy all the requirements of the SP Program, the Participants will receive an amount of two dollars (MSP), for each one dollar (to a maximum of $1,000) which is accumulated in their ANZ Progress Saver Account over the savings period. The MSP for the pilot program will be made between 30 November 2004 and 28 February 2005.
- Interest earned by Participants on the funds deposited into the ANZ Progress Saver account is not included in the calculation of the MSP.
- The ANZ Progress Saver Account used by Participants in the SP Program is a standard ANZ product. The terms and conditions for operation of this account will not change for Participants in the SP Program.
- The MSP is paid by the Charitable Partners at the end of the savings period. The method of payment will be determined by the participant and the Charitable Partner. It can be direct to the participant, to a third party on behalf of the participant or a combination of both. The Charitable Partner will fund the MSP from donations made by the ANZ.

Ruling

18. The Matched Savings Payment received by Participants or directed to a third party on behalf of the Participant under the SP Program is not:

(a) ordinary income as defined under section 6-5 of the ITAA 1997; or

(b) statutory income as defined under section 6-10 of the ITAA 1997.

19. Since the MSP received by Participants or directed to a third party on behalf of the Participant under the SP Program is not ordinary or statutory income, it is not assessable income under section 6-15 of the ITAA 1997.

Explanation

20. An amount received by a taxpayer is included in assessable income if it is:

- Ordinary income (Subsection 6-5(1) of the ITAA 1997 provides that your assessable income includes income according to ordinary concepts, which is called ordinary income.); or
- Statutory Income (Subsections 6-10(1) and 6-10(2) of ITAA 1997 provide that some amounts that are *not* ordinary income will be included in your assessable income by provisions and these amounts are called statutory income).

21. If an amount is not ordinary income and is not statutory income, it is not assessable income: subsection 6-15(1) of the ITAA 1997.

Ordinary Income

22. Ordinary income is not defined in the Income Tax Assessment Act.

23. The courts have established the following principles to determine whether an amount received is ordinary income:

- What receipts ought to be treated as income must be determined in accordance with the ordinary concepts and usages of mankind, except in so far as a statute dictates otherwise: *Scott v. FC of T* (1935) 35 SR (NSW) 215; (1935) 3 ATD 142 per Jordan CJ at SR 219; ATD 144 ('*Scott Case'*).

- Whether a receipt is income of the recipient will depend on the quality or character of that receipt in the hands of the recipient: *Hayes v. FC of T* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73 (‘*Hayes Case’*); *Scott Case.*
- Whether the payment received is income depends upon a close examination of all relevant circumstances: *The Squatting Investment Co Ltd v. FC of T* (1953) 86 CLR 570 at 627; (1953) 10 ATD 126 at 146 (‘*Squatting Investment Case’*).
- Whether the payment received is income is an objective test: *Hayes Case.*

24. The general proposition established in case law to determine whether a receipt is income or not depends on whether having regard to the entire circumstances the receipt is the product of any employment, services rendered by the recipient or any business or revenue producing activity carried on (*Squatting Investment Case*; *Hayes Case; Scott Case*; *Commissioner of Taxes (Victoria) v Phillips* 55 CLR 144 (‘*Phillips Case’*); *A.L. Hamblin Equipment Pty Ltd v Federal Commissioner of Taxation* (1974) 130 CLR 159; 74 ATC 4001; (1974) 4 ATR 208 (‘*Hamblin Case’*)). In Taxation Ruling IT 2674 the Commissioner has set out factors that will be taken into account to determine whether an amount of a gift is ordinary income. Paragraph 11 of IT 2674 provides that, consideration needs to be given to the whole of the circumstances and the following factors:

- How, in what capacity and for what reason the recipient received the payment.
- Whether the payment is of a kind which is a common incident of the recipient’s calling or occupation.
- Whether the payment was made voluntarily.
- Whether the payment was solicited.
- Whether the payment can be traced to gratitude engendered by some service rendered by the recipient.
- The motive of the person making the payment. (Rarely decisive as a mixture of motives may exist.)
- Whether the recipient relies on the payment for regular maintenance of themselves or dependants.

25. While IT 2674 relates principally to the characterisation of gifts, an assessment of the entire circumstances and the factors set out above are equally relevant in other cases.

26. The SP Program Participants will receive the MSP provided they meet:

- the program's eligibility criteria; and
- the requirements of the program which includes achieving the goals and objectives as agreed to by the Participants and the Relationship Manager.

27. The MSP payment is received by the Participants solely as a result of successfully completing the requirements of the SP Program. There is no connection between the payments and the recipient's occupation or employment. It is noted that to be eligible to participate in the program the recipient must have regular income from paid employment. However this is simply to ensure that the goals and objectives of the program are realistic and achievable and not as a reward for some income producing activity.

28. Another requirement of the SP Program is that regular deposits must be made into an ANZ Progress Saver account. Interest that is paid as a result of the deposits into the Progress Saver account is not included in the calculation of the MSP. The MSP has no connection to the participant's ordinary income earning activities nor has it a relationship to any bank accounts held by the recipient.

29. There is no obligation on the Charitable Partner to make a MSP to a SP Program Participant. The relationship manager of the Charitable Partner reserves the right to determine who is eligible for matching of funds in accordance with the SP Program terms and conditions.

30. The payment is not solicited by the SP Participant. The MSP opportunity has arisen as a consequence of discussions between ANZ and the Charitable Partners and is offered to members of the general public in the trial area who satisfy the program eligibility requirements.

31. The MSP cannot be traced to gratitude engendered by some service rendered by the recipient to either ANZ or the Charitable Partner. One of the program requirements is for the Participants to make regular deposits into an ANZ Progress Saver account. The use of the Progress Saver account is for administrative purposes, to enable the relationship manager of the Charitable Partner confirm that the requirements of the SP Program have been met. At the end of the SP Program the participant may close the account.

32. The motive of the ultimate donor (ANZ) and the Charitable Partners is a united desire to assist low income earners fund education related products and services for their children enhance financial literacy and establish a savings habit.

33. The recipient of the MSP does not rely on the payment for regular maintenance of themselves or their dependants. Eligibility is restricted to persons who have regular employment and can demonstrate a capacity to save after their regular expenses have been paid. The MSP is made in one lump sum at the end of the savings period and the relationship manager of the Charitable Partner ensures that the funds are used to finance the selected educational related product or service.

Statutory Income

34. 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 about assessable income. Included in this list and of relevance to this matter is paragraph 26(e) of the ITAA 1936.

35. Paragraph 26(e) of the ITAA 1936 provides that the value of all gratuities and benefits given or granted to them in respect to, or for or in relation directly or indirectly to, any employment will be included in their assessable income. It provides that an amount is included in assessable income if 'given or granted to him in respect of…any employment of or services rendered…'. The payment of the MSP has no direct or indirect connection with any employment of or services rendered by the Participants. As such the MSP payments are not assessable under paragraph 26(e).

Assessable Income

36. The MSP received by the Participants does not constitute either ordinary or statutory income, under either section 6-5 or section 6-10 of the ITAA 1997 or paragraph 26(e) of the ITAA 1936. Consequently, the MSP received is not assessable income of the SP Participants in accordance with section 6-15 of the ITAA 1997.

Detailed contents list

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

Commissioner of Taxation
4 August 2004

Previous draft:
Not previously issued as a draft

Related Rulings/Determinations:
CR 2001/1; CR 2002/49; IT 2674; TR 92/1; TR 92/20; TR 97/16; TR 99/17

Subject references:
- assessable income
- gifts to individuals

Legislative references:
- Copyright Act 1968
- TAA 1953 Pt IVAAA
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 6-10(1)
- ITAA 1997 6-10(2)
- ITAA 1997 6-15
- ITAA 1997 6-15(1)
- ITAA 1936 26(e)

Case references:
- Squatting Investment Co Ltd v. FC of T (1953) 86 CLR 570 (1953) 5 AITR 496 (1953) 10ATD 126
- Scott v. FC of T (1966) 117 CLR 514 (1966) 10 AITR 367 (1966) 14 ATD 286
- Hayes v. DC 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
- A.L. Hamblin Equipment Pty Ltd v Federal Commissioner of Taxation (1974) 130 CLR 159; (1974) 74 ATC 4001; (1974) 4 ATR 208
- Commissioner of Taxes (Victoria) v Phillips 55 CLR 144

ATO references
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