


# ***CR 2008/59 - Income tax: tax treatment of Commercial Horse Assistance Payments to primary carers of commercial horses affected by the equine influenza quarantine***

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## Class Ruling

# Income tax: tax treatment of Commercial Horse Assistance Payments to primary carers of commercial horses affected by the equine influenza quarantine

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Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
<b>What this Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>8</b>
<b>Scheme</b>	<b>13</b>
<b>Ruling</b>	<b>24</b>
<b>NOT LEGALLY BINDING SECTION:</b>	
<b>Appendix 1:</b>	
<b><i>Explanation</i></b>	<b>29</b>
<b>Appendix 2:</b>	
<b><i>Detailed contents list</i></b>	<b>50</b>

### **📌 This publication provides you with the following level of protection:**

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
  - section 15-2 of the ITAA 1997;
  - subsection 118-10(3) of the ITAA 1997; and
  - section 118-20 of the ITAA 1997.

All subsequent legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

## Class of entities

3. The class of entities to which this Ruling applies is primary carers of commercial horses who received a Commercial Horse Assistance Payment (CHAP) from the Australian Government through racing and harness organisations during the equine influenza outbreak and resulting quarantine standstill.

## Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 23 of this Ruling.

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

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

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## Date of effect

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8. This Ruling applies from 1 July 2007 to 30 June 2008. However, the Ruling continues to apply after 30 June 2008 to all entities within the specified class who entered into the specified scheme during the term of the Ruling.

9. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or

- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## **Scheme**

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13. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application from PricewaterhouseCoopers;
- funding deeds for CHAP between the Australian Government and the relevant racing and harness authority that is responsible for delivering the assistance;
- the CHAP Guidelines; and
- additional details regarding the CHAP arrangements provided by the applicant, including question and answer sheets and application information.

14. The outbreak of equine influenza in Queensland and New South Wales required the introduction of quarantine measures and as a result racing and other equestrian events were restricted. The Australian Government subsequently announced a suite of assistance measures for affected horse-dependent businesses, employees and employers. The CHAP scheme was one such measure. It provided funds to primary carers of commercial horses that would otherwise be active and potentially earning prize money if not for the equine influenza outbreak and the resulting standstill (note that under the CHAP guidelines, the word 'income' is used to refer to prize money generated by the horse).

15. A CHAP was made to provide for the welfare and ongoing training of horses to ensure they remained fit and healthy to enable the horses to return to normal activity as soon as the standstill ended. In the case of horses that had contracted equine influenza, the assistance was to ensure that appropriate veterinary care and required medication was able to be provided throughout the standstill period. However, the method of calculation of CHAP was not related to the actual costs of maintaining the horses but as per the methodology set out in paragraph 21 of this Ruling.

16. The CHAP was made to the 'primary carers' of the affected horses. Under the CHAP Guidelines, a primary carer is defined as:

the person who is responsible for the daily care of commercial horse/s and directly incurs all associated costs such as feed and veterinary attention.

17. A primary carer's eligibility for a CHAP was based on the commerciality of the horses in their care and not their own commerciality. It was not a requirement under the deeds that the primary carer's horse related activities amounted to the carrying on of a business. The CHAP Guidelines provided that the CHAP was only for commercial horses, being horses that undertake activities that generated, or have the potential to generate, prize money for their owner.

18. The eligibility criteria required the primary carer to demonstrate such matters as the number of eligible horses, the number of days for which these horses were unable to undertake their normal activities to earn, or potentially earn prize money, and their location. Applicants were required to provide evidence of stable returns or other documentation detailing the horses under their care that were unable to earn prize money. Under the CHAP guidelines, applicants were not required to demonstrate that they had incurred, or would incur expenses in caring for the horse.

19. The CHAP program was administered by the relevant racing and harness authority in each state and territory. These bodies were responsible for receiving and assessing claims and distributing the CHAPs to successful applicants, pursuant to deeds between the government and the bodies.

20. Initially, the scheme operated from 25 August to 19 November 2007, and was later extended until 14 March 2008 or until the movement restrictions were lifted, whichever happened first. It was announced on 13 March 2008 that Australia was provisionally free of equine influenza and that with appropriate paperwork, horses were again free to move both within their states and interstate.

**Method of calculation of CHAP**

21. A CHAP was based on a daily rate per eligible horse. The daily rate varied between \$20 and \$60 depending on the type of racing activity and the location. For example, thoroughbred race horses attracted a higher rate than harness racers, and metropolitan thoroughbreds a higher daily rate than country thoroughbreds.

22. Prior to 25 September 2007, prize money generated by eligible horses did not affect CHAP entitlement. After this date, however, any prize money generated by an eligible horse resulted in a reduction in the CHAP related to that horse.

23. Under the CHAP Guidelines, a primary carer receiving a CHAP was expected to pass the majority of the benefit of this assistance to the owners of the relevant horse. Generally, the benefit was passed to the owners of the horse through a reduction of training fees charged to the owners. The extent to which CHAP funding was expected to be applied in this way varied between the different bodies administering the arrangement.

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**Ruling****Primary carers who received a CHAP and who were carrying on a business involving, or otherwise deriving assessable income from, the care and training of horses**

24. A CHAP received by a primary carer carrying on a business involving the care and training of horses or otherwise deriving assessable income from the care and training of horses, will be included in their assessable income under section 6-5.

25. Any capital gain made as a result of receiving a CHAP is reduced to nil under section 118-20 where that amount is included in assessable income under section 6-5.

**Primary carers who received a CHAP and who do not derive assessable income from the care and training of horses**

26. A CHAP received by a primary carer who does not derive assessable income from the care and training of horses (because their activities constitute a hobby or recreational pastime), is not included in their assessable income under section 6-5 or section 15-2.

27. Where a CHAP is received by a primary carer whose horse-related activities amount to a hobby or recreational pastime, the CHAP is applied to reduce the cost base of the relevant underlying CGT asset of the primary carer.

# CR 2008/59

28. Any capital gain made on a subsequent CGT event happening to the underlying CGT asset that is a personal use asset of the primary carer will be disregarded under subsection 118-10(3), providing the first element of the cost base of the asset (or the first element of the cost if it is a depreciating asset) is \$10,000 or less. Any capital loss made from a personal use asset is disregarded under subsection 108-20(1).

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**Commissioner of Taxation**

17 September 2008

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## **Appendix 1 – Explanation**

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**❶** *This Appendix 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.*

29. A primary carer's entitlement to a CHAP was based on the commerciality of the horses within their care. A primary carer was only eligible for a CHAP in relation to horses that would otherwise have been active and potentially earning prize money for their owner.

30. As the commerciality of a primary carer's own activities were not relevant to their entitlement to receive the CHAP, payments were received by primary carers who were carrying on a business involving the care and training of horses and by some primary carers who were not.

31. In all cases, however, primary carers who received payments under the CHAP scheme received the payments as a direct consequence of their horse-related activities. A CHAP was made to provide for the welfare and ongoing training of horses to ensure they remained fit and healthy to enable the horses to return to normal activity as soon as the standstill ended.

32. As the payments were made in relation to a recipient's horse-related activities, the tax consequences of the payments will be affected by the nature of those activities.

### **Primary carers who received a CHAP and who were carrying on a business involving, or otherwise deriving assessable income from, the care and training of horses**

#### ***Carrying on a business***

33. Whether or not a person is carrying on a business depends on the facts of the individual case. It is not the purpose of this ruling to consider this issue. Reference can be made to other public rulings on the matter of what constitutes a business, for example, Taxation Ruling TR 2008/2 and Taxation Ruling TR 97/11.

#### ***Income according to ordinary concepts***

34. Subsection 6-5(1) provides that an amount is included in assessable income if it is income according to ordinary concepts (ordinary income). Income according to ordinary concepts is not defined in the income tax legislation. Accordingly, it is necessary to apply principles developed by the courts to the facts of a particular case.

35. Whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.<sup>1</sup>

36. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*<sup>2</sup> (*GP International Pipecoaters*), the Full High Court stated at CLR 138; ATR 7; ATC 4420:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

37. Although a CHAP may be received fortnightly, this, of itself, is not decisive of the question of whether the receipt is ordinary income. Whether the CHAP received is income depends upon a close examination of all relevant circumstances.

38. The CHAP was made to the 'primary carers' of the affected horses to provide for the welfare and ongoing training of horses to ensure they remained fit and healthy to enable the horses to return to normal activity as soon as the standstill ended. Under the CHAP Guidelines, a primary carer is defined as the person who is responsible for the daily care of commercial horse/s and directly incurs all associated costs such as feed and veterinary attention.

39. For a primary carer carrying on a business involving the care and training of horses, the receipt of the CHAP is an incident of carrying on that business. An amount that is received in, or as an incident to, or a product of, a business carried on, or services rendered, by that taxpayer, is included in ordinary income.<sup>3</sup> Accordingly, a CHAP received by a primary carer carrying on a business involving the care and training of horses will be included in their assessable income under section 6-5.

40. Similarly, where a primary carer who received a CHAP was otherwise deriving assessable income from the care and training of horses, the receipt will also have the character of income and will be included in their assessable income under section 6-5.

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<sup>1</sup> *Scott v. FC of T* (1966) 117 CLR 514 at 526 and *GP International Pipecoaters Pty Ltd v. FC of T* (1990) 170 CLR 124 at 136.

<sup>2</sup> (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1.

<sup>3</sup> See *FC of T v. The Myer Emporium* (1987) 163 CLR 199; (1987) 61 ALJR 270; (1987) 71 ALR 28; (1987) 18 ATR 693; (1987) 87 ATC 4363; *Westfield Ltd v. FC of T* (1991) 28 FCR 333; (1991) 99 ALR 510; (1991) 21 ATR 1398; (1991) 91 ATC 4234.

***Capital gains tax***

41. Section 118-20 operates to reduce any capital gain where the amount received is otherwise included in assessable income or exempt income. Any capital gain that arises from the primary carer's receipt of the CHAP is reduced to nil under subsection 118-20(2) where that amount is included in assessable income under section 6-5.

**Primary carers who received a CHAP and who do not derive assessable income from the care and training of horses**

42. Participation in activities generating pastime or hobby receipts is a social or personal pursuit of a non-commercial nature.<sup>4</sup> A receipt that is incidental to a hobby or recreational pastime is not assessable income under either section 6-5 or section 15-2.<sup>5</sup> Accordingly, a CHAP received by a primary carer, whose horse-related activities amount to a hobby or recreational pastime, is not included in assessable income under either section 6-5 or section 15-2.

***Capital gains tax***

43. A primary carer is entitled to receive a CHAP once an application is lodged, the eligibility requirements under the guidelines are satisfied, and the application has been approved. The right to receive the CHAP is a CGT asset under section 108-5. The primary carer's ownership of this right ends when the CHAP is paid.

44. In this situation, however, it is appropriate to look through the right to receive the CHAP to the more relevant underlying CGT asset in relation to which the CHAP is received.

45. Where the primary carer is the owner of the horse, the most relevant CGT asset is the horse to which the CHAP relates. Where the primary carer is a trainer who has no ownership interest in the horse, the most relevant CGT asset to which the CHAP most directly relates is the bundle of rights under their contractual agreement with the owner to provide for the care and training of the horse. This bundle of rights is a CGT asset under section 108-5.

46. In both cases, the CHAP will be treated as a recoupment of the cost base of the relevant asset (the horse or the bundle of contractual rights), and will reduce the cost base and reduced cost base of the asset to that extent at the time of receiving the CHAP. There is, therefore, no immediate CGT liability for the trainer or the owner of the horse in receiving the CHAP.

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<sup>4</sup> See paragraph 33 of Taxation Ruling TR 1999/17 which cited *Martin v. FCT* (1953) 90 CLR 470 at 481; (1953) 10 ATD 226 at 230; [1953] ALR 755 at 758; *Case Z16* 92 ATC 183; *AAT Case 7839* (1992) 23 ATR 1115; *Case C18* 71 ATC 77 at 79; *Case 15* 17 CTBR (NS) 90 at 93-94; *Case T58* (1968) 18 TBRD (NS) 306; *Case 75* 14 CTBR (NS) 432.

<sup>5</sup> Taxation Ruling TR 1999/17.

47. If the horse is kept mainly for the personal use or enjoyment of the owner of the horse, rather than being used in a business or otherwise used to produce assessable income, it is a personal use asset. As the horse is a depreciating asset, any capital gain made on any subsequent CGT event that happens to the horse will be disregarded under subsection 118-10(3) if the first element of the cost of the horse (or an interest in it) under Subdivision 40-C is \$10,000 or less.

48. However, any capital gain is not disregarded where the first element of the cost of the horse is more than \$10,000.

49. Where the primary carer is a horse trainer who has no ownership interest in the horse, the relevant CGT asset is the bundle of rights under their contractual agreement with the owner to provide for the care and training of the horse. As the CGT asset is kept mainly for the personal use or enjoyment of the primary carer (the hobby or recreational pastime), it is a personal use asset under paragraph 108-20(2)(a). On any subsequent CGT event that happens to the bundle of rights, any capital gain will be disregarded under subsection 118-10(3), providing the cost base of the asset (reduced as explained in paragraph 47 of this Ruling) is \$10,000 or less.

## **Appendix 2 – Detailed contents list**

50. The following is a detailed contents list for this Ruling:

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant provision(s)	2
Class of entities	3
Qualifications	4
<b>Date of effect</b>	<b>8</b>
<b>Scheme</b>	<b>13</b>
Method of calculation of CHAP	21
<b>Ruling</b>	<b>24</b>
Primary carers who received a CHAP and who were carrying on a business involving, or otherwise deriving assessable income from, the care and training of horses	24
Primary carers who received a CHAP and who do not derive assessable income from the care and training of horses	26
<b>Appendix 1 – Explanation</b>	<b>29</b>
Primary carers who received a CHAP and who were carrying on a business involving, or otherwise deriving assessable income from, the care and training of horses	33
<i>Carrying on a business</i>	33
<i>Income according to ordinary concepts</i>	34
<i>Capital gains tax</i>	41
Primary carers who received a CHAP and who do not derive assessable income from the care and training of horses	42
<i>Capital gains tax</i>	43
<b>Appendix 2 – Detailed contents list</b>	<b>50</b>

## References

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*Previous draft:*

Not previously issued as a draft

- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

*Related Rulings/Determinations:*

TR 97/11; TR 1999/17;  
TR 2008/2

*Case references:*

- AAT Case 7839 (1992) 23 ATR 1115
- Case 15 17 CTBR (NS) 90
- Case 75 14 CTBR (NS) 432
- Case C18 71 ATC 77
- Case T58 (1968) 18 TBRD (NS) 306
- Case Z16 92 ATC 183
- FC of T v. The Myer Emporium (1987) 163 CLR 199; (1987) 61 ALJR 270; (1987) 71 ALR 28; (1987) 18 ATR 693; (1987) 87 ATC 4363
- GP International Pipecoaters Pty Ltd v. FC of T (1990) 170 CLR 124; 1990 ATC 4413; (1990) 21 ATR 1
- Martin v. FCT (1953) 90 CLR 470; (1953) 10 ATD 226 at 230; [1953] ALR 755 at 758
- Scott v. FC of T (1966) 117 CLR 514
- Westfield Ltd v. FC of T (1991) 28 FCR 333; (1991) 99 ALR 510; (1991) 21 ATR 1398; (1991) 91 ATC 4234

*Subject references:*

- bounties & subsidies
- capital receipts
- CGT asset
- CGT cost base
- derived
- grants of financial assistance & funding
- horse industry
- horse racing
- personal use asset

*Legislative references:*

- ITAA 1997
  - ITAA 1997 6-5
  - ITAA 1997 6-5(1)
  - ITAA 1997 15-2
  - ITAA 1997 Subdiv 40-C
  - ITAA 1997 108-5
  - ITAA 1997 108-20(1)
  - ITAA 1997 108-20(2)
  - ITAA 1997 108-20(2)(a)
  - ITAA 1997 118-10(3)
  - ITAA 1997 118-20
  - TAA 1953
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ATO references

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Income Tax ~~ Capital Gains Tax ~~ cost base and reduced cost base