



CR 2011/62 - Income tax: National Awards for Outstanding Teaching and School Leadership

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Class Ruling

Income tax: National Awards for Outstanding Teaching and School Leadership

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① 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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

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;
- section 104-25 of the ITAA 1997; and
- section 118-37 of the ITAA 1997.

All subsequent 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 recipients of the National Awards for Outstanding Teaching and School Leadership. In this Ruling, a person belonging to this class of entities is referred to as a recipient.

Qualifications

4. The Commissioner makes this Ruling on the precise scheme 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 9 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

8. This Ruling applies from 1 July 2011. However, this Ruling will 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 this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. 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, dated 19 November 2010;
- Award guidelines;
- Nomination form; and
- Correspondence from the Australian Institute for Teaching and School Leadership dated 7 January 2011 and 4 March 2011.

Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

10. The National Awards for Outstanding Teaching and School Leadership were announced by the Minister for School Education, Early Childhood and Youth on 8 April 2011. The awards are part of the *Smarter Schools National Partnership for Improving Teacher Quality* program established by the government.

11. The National Awards for Outstanding Teaching and School Leadership are administered by the Australian Institute for Teaching and School Leadership (AITSL).

12. AITSL was established in January 2010 to provide national leadership for the Commonwealth, state and territory governments in promoting excellence in the profession of teaching and school leadership.

13. AITSL is a public company limited by guarantee, established under the *Corporations Act 2001*. It is funded by the Australian Government. The Minister for Education, Employment and Workplace Relations is the sole member of the company. It operates under its own constitution, with decisions made by an independent board of directors.

14. AITSL's activities include developing and maintaining national professional standards for teachers and school leaders, fostering and driving high quality professional development for teachers and school leaders and working collaboratively across jurisdictions with key professional bodies.

15. As part of the expectations and priorities established by the Ministerial Council for Education, Early Childhood Development and Youth Affairs, AITSL was required to develop a new set of awards to recognise excellence in teaching and school leadership.

16. Part of AITSL's budget is drawn from the national component of the *Smarter Schools National Partnership for Improving Teacher Quality*.

17. The proposed awards will be funded from AITSL's annual budget.

18. There will be five awards made each year, one in each of the following categories:

- Australian Primary Teacher of the Year;
- Australian Secondary Teacher of the Year;
- Australian Primary Principal of the Year;
- Australian Secondary Principal of the Year; and
- The Australian Government Minister's Award for Excellence in Teaching or Leadership (different category identified each year).

19. Nominations for the awards will be received from both government and non-government teacher employing authorities. All classroom teachers, from every sector and level of primary and secondary schooling, including early childhood and special education teachers, are eligible to be nominated for the teacher categories. School principals from every sector, including those involved in early childhood and special education will be eligible to be nominated for the school leadership categories.

20. There will be no self-nomination.

21. AITSL Secretariat will process nominations and a panel of recognised educators will be utilised for the judging process. The judging panel's decision is final – no appeals will be entered into.

22. The conditions for nomination include:

- nominated individuals are required to sign the nomination form to signify their agreement to being involved in the awards process;
- nominees expecting to retire before the end of December 2012, or taking extended leave after that date, will not be considered for selection as national finalists and winners in 2011;
- all category winners will be expected to accept an ambassadorial role to promote the awards in 2012 and to promote their profession; and
- individuals agree for their photographs, profiles and other details to be used for promotional purposes by AITSL.

23. The terms of award include:

- Nominees are only eligible to win one sabbatical scholarship.

- Each category winner will receive a sabbatical scholarship, of up to four weeks, to travel overseas to work with internationally recognised academics and education practitioners in relevant areas of professional learning.
- The award scholarship will be up to the value of \$25,000. Winners cannot receive the scholarship amount as a cash payment. The award fund will be used to pay for return airfares, accommodation and a per diem allowance disbursed to award recipients to cover meals, in-country transport and incidentals. Scholarship recipients will be required to retain receipts to account for the expenditure of the per diem allowance.
- The per diem allowance will be paid in advance at up to \$225 (AUS) per day (subject to review).
- The winner's school will receive funding from AITSL to cover the cost of teacher/school leader relief days for their replacement.
- The awards are not redeemable for cash and are non-transferable.
- The scholarship must be undertaken within 12 months of the annual recognition ceremony.
- On return, scholarship holders are expected to share their knowledge and innovative practices gained from this experience across professional learning communities. Award recipients will be invited to make a presentation to the AITSL Board.
- Within six months of completing the scholarship, winners in each category will be expected to prepare a paper or publication of other suitable medium documenting their learning experience. While acknowledging authors, these publications will become the property of AITSL and will be published on the AITSL website and/or other external publications.
- Travel and accommodation costs will be met for national finalists (plus one guest) to attend the recognition ceremony.

Ruling

24. The award scholarship awarded to recipients of the National Awards for Outstanding Teaching and School Leadership is not assessable to the recipients as ordinary income under section 6-5 or as statutory income under section 15-2.

25. CGT event C2 under section 104-25 happens when recipients receive the award scholarship. However, any capital gain or capital loss is disregarded under subsection 118-37(2).

Commissioner of Taxation

22 June 2011

Appendix 1 – Explanation

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.*

26. A payment or other benefit received by a taxpayer 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

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

28. The legislation does not provide specific guidance on the meaning of income according to ordinary concepts. However, a substantial body of case law exists which identifies likely characteristics.

29. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*, the Full High Court stated:

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.¹

¹ (1990) 170 CLR 124 at 138; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

30. Amounts that are periodical, regular or recurrent, relied upon and expected on a periodic basis by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income,² as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.³ Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.⁴

31. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁵ The whole of the circumstances must be considered⁶ and the motive of the payer may be relevant to this consideration.⁷

32. The award scholarships to be offered by AITSL are to recognise excellence in teaching and school leadership. The recipient of an award scholarship will not be an employee of AITSL, but will be currently employed as a classroom teacher or school principal.

33. Having regard to the nature of the award scholarships, the character of the award scholarships in the hands of the recipients are such that they are not received by virtue of their employment or as a recompense for services rendered, even though the award scholarships will be made in recognition of their professional achievements. The nature of each award scholarship is that of a personal windfall or gain not having the qualities of income.

34. The award scholarships are not a common incident of the income earning activities of the recipients. The award scholarships are made to teachers and school principals in recognition of the contribution that they have made to excellence in education within Australia, and therefore are not assessable as ordinary income under section 6-5.

² *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82; 5 AITR 443.

³ *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 570; (1956) 11 ATD 68; *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

⁴ *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; (1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 456 (per Fullagar J).

⁵ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 375; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73; (1956) 6 AITR 248 at 254; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375 at 402; 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

⁶ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627; (1953) 5 AITR 496; 24 ATR 527.

⁷ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

Statutory income: allowances and other things provided in respect of employment

35. Section 6-10 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included as assessable income by another provision.
36. Section 10-5 lists provisions about statutory income and included in this list is section 15-2.
37. Section 15-2 includes in a taxpayer's assessable income the value of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to the taxpayer 'in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by' the taxpayer.
38. As the award scholarships are not ordinary income, and all recipients will be employed as either teachers or school principals at the time of receiving the award scholarship, it is necessary to consider whether the award scholarships are to be granted 'in respect of, or for or in relation directly or indirectly to, any employment of or services rendered', and therefore assessable as statutory income.
39. The leading cases on this question 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.
40. Having regard to the nature of the award scholarships, it cannot be regarded, in a real sense, as a product of any employment of the recipients.
41. Although the recipients will be expected to prepare a paper, publication or other suitable medium documenting their learning experience, this is not sufficient to amount to a requirement on the recipient of the award scholarship to perform work or render services to AITSL.
42. Therefore, the award scholarship is not assessable as statutory income under section 15-2.

Capital gains tax

43. A recipient's entitlement to receive the award scholarship is a CGT asset under subsection 108-5(1) that is acquired when the scholarship award is granted.
44. CGT event C2 happens under section 104-25 when a recipient's entitlement to receive the award scholarship is satisfied. The time of the CGT event under subsection 104-25(2) is when the payment is made.

45. However, any capital gain or capital loss resulting from CGT event C2 happening is disregarded under paragraph 118-37(2)(a). This paragraph provides a CGT exemption for a capital gain or capital loss that results from the receipt of a payment as reimbursement or payment of expenses under a scheme established by an Australian government agency under an enactment. The National Awards for Outstanding Teaching and School Leadership is such a scheme.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- capital gains tax
- CGT Events C1-C3 - end of a CGT asset
- exempt income
- income
- prizes and awards

Legislative references:

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 104-25
- ITAA 1997 104-25(2)
- ITAA 1997 108-5(1)
- ITAA 1997 118-20
- ITAA 1997 118-37
- ITAA 1997 118-37(2)
- ITAA 1997 118-37(2)(a)
- TAA 1953
- Copyright Act 1968
- Corporation Act 2001

Case references:

- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation (1977) 34 FLR 375; 77 ATC 4255; (1977) 7 ATR 519
- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5 AITR 443
- Federal Commissioner of Taxation v. Rowe (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392
- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 AITR 248
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367
- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570

ATO references

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Income Tax ~~ Capital Gains Tax ~~ CGT events C1 to C3 - end of a CGT asset
Income Tax ~~ Capital Gains Tax ~~ exemptions other than main residence