


# ***CR 2011/69 - Income tax: Aged Care Education and Training Incentive Program payments***

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## Class Ruling

# Income tax: Aged Care Education and Training Incentive Program payments

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### **ⓘ 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

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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 6-10 of the ITAA 1997;
- section 10-5 of the ITAA 1997; and
- section 15-2 of the ITAA 1997.

All legislative references 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 payments made under the Aged Care Education and Training Incentive Program. In this Ruling, a person belonging to this class of entities is referred to as a recipient.

## Qualifications

4. The Commissioner makes this Ruling based 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

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8. This Ruling applies from 1 July 2010 to 30 June 2014. The Ruling continues to apply after 30 June 2014 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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

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9. The following description of the scheme is based on information provided by the applicant.

10. The Aged Care Education and Training Incentive (ACETI) Program is a national incentive program that will provide two payments (referred to in this Ruling as a commencement payment and a completion payment) to eligible aged care workers who undertake eligible education and training programs to enhance their career as a personal care worker, an enrolled nurse or a registered nurse.

11. To apply, an applicant must:

- be an Australian citizen or permanent resident;
- be employed on a full time, part time or casual basis providing direct care in and by an eligible aged care service on application and also while undertaking an eligible training course;
- have a commitment to working in the aged care sector, based on their current work and/or in pursuing their career in aged care; and
- commence an eligible training course on or after 1 July 2010 and before 30 June 2014.

12. The employer is required to make a declaration in the application form confirming the applicant's commitment to working in the aged care sector based on their current work and/or in pursuing their career in aged care.

13. An eligible aged care service includes any of the following:

- Commonwealth funded residential aged care services; and/or
- Commonwealth funded Aboriginal and Torres Strait Islander flexible care services; and/or
- services providing Commonwealth funded community care or flexible aged care services including:
  - Community Aged Care Packages; and/or
  - Extended Aged Care at Home; and/or
  - Extended Aged Care at Home – Dementia.

14. Payments can only be paid to eligible aged care workers undertaking eligible courses as outlined in the *ACETI Guidelines*.

15. Eligible courses means study with a training provider accredited as a Registered Training Organisation or an Australian University that is registered to provide the eligible certificates, diplomas or degree qualifications as follows:

**Vocational Education and Training Courses**

<b>Course Code</b>	<b>Name of Course</b>
CHC30208	Certificate III in Aged Care
CHC30308	Certificate III in Home and Community Care
CHC40108	Certificate IV in Aged Care
CHC40208	Certificate IV in Home and Community Care
CHC40608	Certificate IV in Leisure and Health
BSB40807	Certificate IV in Frontline Management
CHC52208	Diploma of Community Services Coordination

**Enrolled Nurse Training Courses**

<b>Course Code</b>	<b>Name of Course</b>
HLT51607	Diploma of Nursing (Enrolled/Division 2 Nursing)
HLT43407	Certificate IV in Nursing (Enrolled/ Division 2 Nursing)

**Registered Nurse Training Courses**

<b>Course Code</b>	<b>Name of Course</b>
N/A	Undergraduate Bachelor of Nursing

16. The amounts of the payments are dependent on the recipient's level of study. Recipients undertaking eligible:-

- Vocational Education and Training courses will receive:
  - \$500 after commencement of the course; and
  - \$500 on successful completion of the course.
- Enrolled Nurse Training courses will receive:
  - \$1,000 after commencement of the course; and
  - \$1,500 on successful completion of the course and registration with the Nursing and Midwifery Board of Australia as an Enrolled Nurse.
- Registered Nurse Training courses will receive:
  - \$2,000 after commencement of the course; and
  - \$3,000 on successful completion of the course and registration with the Nursing and Midwifery Board of Australia as a Registered Nurse.

17. Applicants apply to Medicare Australia for the payments under the ACETI Program. Medicare Australia will validate the application and assess if the applicant is eligible to receive the payment.

18. The first payment is made after commencement of the course (commencement payment) to an eligible recipient directly from Medicare Australia to the recipient's bank account, where they are employed by an eligible aged care service on application and the other requirements as expressed in paragraph 11 of this Ruling are met.

19. A second payment on successful completion of the course (completion payment) is made directly from Medicare Australia to the recipient's bank account on lodgement of another application form with Medicare Australia. To receive the completion payment, the recipient must be employed by an eligible aged care service during and on the date of completion of the eligible training course and meet the other requirements in paragraph 11 of this Ruling.

20. The recipient does not need to acquit either of these payments, spend the payments, or enter into a financial funding agreement with the Commonwealth or any other organisation.

21. The recipient is free to leave the employ of an eligible aged care service during the course of study but must take up employment with another eligible aged care service in order to remain eligible to receive the payments.

22. If a recipient does not complete an eligible, course, or they leave the aged care sector before completion of the training course, then they will not be eligible to receive the completion payment. However, there is no requirement to repay the commencement payment received, except in cases of fraud or administrative error.

23. If a recipient leaves the aged care sector after receiving the completion payment, there is no requirement to repay either the commencement or completion payment, except in cases of fraud.

## **Ruling**

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24. The payments made under the ACETI Program are not ordinary income of the recipient and are therefore not assessable under section 6-5.

25. The payments made under the ACETI Program are assessable as statutory income under section 15-2.

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**Commissioner of Taxation**

20 July 2011

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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.*

### Ordinary Income

26. Under subsection 6-5(1) an amount is assessable income if it is income according to ordinary concepts.

27. The legislation does not provide guidance on the meaning of income according to ordinary concepts, however, a substantial body of case law exists.

28. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*<sup>1</sup> 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.

29. 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.

30. In the ACETI Program, the incentive takes the form of two lump sum payments; a commencement payment and a completion payment in relation to undertaking a course of eligible study. The commencement and completion payments are not 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 and are not directly in respect of employment, services rendered, or any business being carried on. Therefore, the payments are not considered to be ordinary income under section 6-5.

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<sup>1</sup> *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; 21 ATR 1; 90 ATC 4413

### Statutory Income

31. 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.
32. Section 10-5 lists provisions about statutory income and included in this list is section 15-2.<sup>2</sup>
33. Section 15-2 provides that the value of all allowances, gratuities, compensation, benefits, bonuses and premiums provided in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by a taxpayer is to be included in their assessable income.
34. The commencement and completion payments made by Medicare Australia will be statutory income under section 15-2 if they are provided to the recipient in respect of, or in relation directly or indirectly to, any employment or services rendered.
35. In *Smith v. Federal Commissioner of Taxation*,<sup>3</sup> Brennan CJ in the High Court indicated that if the employment (or some aspect of employment) is the reason or one of the reasons why the payment is made, the payment is assessable under paragraph 26(e) of the ITAA 1936 (which is now section 15-2). If employment or some aspect of employment is a substantial reason for the payment, it cannot be said that the payment is merely personal or that the payment is extraneous to employment.
36. In *J & G Knowles & Associates Pty Ltd v. Federal Commissioner of Taxation*<sup>4</sup> the Federal Court considered the meaning of 'in respect of employment' in the fringe benefits tax legislation. The Court noted that what has to be established in determining if a benefit is 'in respect of employment' is whether there is a sufficient or material, rather than a causal, connection or relationship between the benefit and the employment.
37. In this case, the recipient's employment in the aged care sector is a prerequisite to participating in the program. There must be a contemporaneous relationship between the recipient's employment and study, on commencement, during and on completion of the eligible course. If they cease to be employed in an eligible aged care service, they no longer qualify for the payment.

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<sup>2</sup> Section 15-2 replaced the former paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936) to which the principal authorities refer.

<sup>3</sup> *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274

<sup>4</sup> *J & G Knowles & Associates Pty Ltd v. Federal Commissioner of Taxation* (2000) 96 FCR 402; 2000 ATC 4151; (2000) 44 ATR 22

38. The commencement and completion payments are made to enhance the career of the recipient as a personal care worker, enrolled nurse or a registered nurse by undertaking study to increase their skills and qualifications. The eligible courses are directly related to the recipient's current field of employment with the skills gained being integral to their everyday duties.

39. The recipient must also demonstrate a commitment to the aged care sector (based on current work and/or in pursuing their career in aged care). The employer plays an active role in that they are required to make a signed declaration affirming the recipient is employed and has the requisite commitment to employment in the aged care sector.

40. Whilst the commencement and completion payments are not made by the employer of the recipient, but rather by Medicare Australia, section 15-2 can still apply to the payment. In *Kelly v. Federal Commissioner of Taxation*<sup>5</sup>, the Court concluded that if a payment is really incidental to employment, it is unimportant whether it comes from the employer or a third party.

41. In the facts of this case, the recipient's employment on commencement, during and on completion of the eligible course is a substantial reason for the payment.

42. In conclusion, the commencement and completion payments are provided to the recipient in respect of, or for or in relation directly or indirectly to, their employment and are assessable under section 15-2.

## **Deductibility of Expenses**

43. Self-education expenses are deductible under section 8-1 where they have a relevant connection to the recipient's current income earning activities, provided they are not a loss or outgoing of a capital, private or domestic nature.

44. Where self-education expenses are deductible under section 8-1 but also fall within the definition of 'expenses of self-education' in section 82A of the ITAA 1936, the latter section operates to limit the amount of expenses otherwise allowable under section 8-1.

45. For further information, recipients should refer to Taxation Ruling TR 98/9 which deals with deductibility of self-education expenses.

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<sup>5</sup> *Kelly v. Federal Commissioner of Taxation* (1985) 80 FLR 155; 85 ATC 4283; (1985) 16 ATR 478

**Pay As You Go (PAYG) withholding**

46. The commencement and completion payments are not regarded as withholding payments under Division 12 of Schedule 1 to the *Taxation Administration Act 1953*. Medicare Australia will not be required to withhold amounts from these payments, nor would they have any other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, providing payment summaries, or annual reporting to the Australian Taxation Office (ATO).

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

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 98/9; TR 2006/10

*Subject references:*

- scholarships

*Legislative references:*

- ITAA 1936 26(e)
- ITAA 1936 82A
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
- ITAA 1997 15-2
- TAA 1953
- Copyright Act 1968

*Case references:*

- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 21 ATR 1; 90 ATC 4413

- Smith v. Federal Commissioner of Taxation (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274
- J & G Knowles & Associates Pty Ltd v. Federal Commissioner of Taxation (2000) 96 FCR 402; 2000 ATC 4151; (2000) 44 ATR 22
- Kelly v. Federal Commissioner of Taxation (1985) 80 FLR 155; 85 ATC 4283; (1985) 16 ATR 478
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47
- Payne v. Federal Commissioner of Taxation 96 ATC 4407
- Federal Commissioner of Taxation v Dixon (1952) 86 CLR 540

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ATO references

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