

***CR 2013/45 - Income tax: the Department of Communities, Child Safety and Disability Services (the Department) Your Life Your Choice Self-Directed Support: Host Providers and Direct Payments***

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## Class Ruling

# Income tax: the Department of Communities, Child Safety and Disability Services (the Department) Your Life Your Choice Self-Directed Support: Host Providers and Direct 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

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 159P of the *Income Tax Assessment Act 1936* (ITAA 1936);
- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);

- section 8-1 of the ITAA 1997;
- section 15-2 of the ITAA 1997; and
- Subdivision 20-A of the ITAA 1997.

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

## **Class of entities**

3. The class of entities to which this Ruling applies comprises:
  - people with disability who have entered into an Individual Funding Agreement with the Department to receive funds under the Your Life Your Choice Self-directed Support Framework (the Framework); and
  - people who have entered into an agreement with the Department to receive funds under the Framework on behalf of a person with disability.

## **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 48 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 January 2013. 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 documents provided by the applicant. The 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 scheme are:

- Class Ruling application dated 8 March 2013 and further information received 8 May 2013;
- *Disability Services Act 2006* (QLD) (the Disability Act) Part 1 Division 2;
- *Disability Services (Your Life Your Choice) Amendment Act 2012* (Amendment Act);
- *Disability Services (Your Life Your Choice) Amendment Act 2012 Explanatory Notes* (Explanatory Notes);
- Disability Services (Your Life Your Choice) Direct Payments Handbook – Interim dated 6 March 2013 (the Handbook);
- Service Agreement (Part A) – Standard Terms of Funding Version: 2.1; and
- Your Life Your Choice – Host Provider Model – Host Provider Handbook dated 11 March 2013.

10. The Disability Act provides the legislative basis for the funding of disability services.

11. The Amendment Act was proclaimed on 19 April 2013.

12. The Objects in Division 2 of Part 1 of the Disability Act are intended to ensure that people with a disability have the same human rights as other members of society and should be empowered to exercise their rights.

13. Subsection 19(2) of the Disability Act states that people with a disability have the right to—

- (a) respect for their human worth and dignity as individuals;

- (b) realise their individual capacities for physical, social, emotional, cultural, religious and intellectual development;
  - (c) live lives free from abuse, neglect or exploitation; and
  - (d) participate actively in decisions affecting their lives, including the development of disability policies, programs and services.
14. The Amendment Act expanded the principles by inserting:
  - (a) recognition of their individual autonomy and independence, including the freedom to exercise choice and have control of their lives.
15. The Amendment Act has updated the Disability Act to enable people with a disability to receive direct funding to obtain disability services.
16. The Explanatory Notes to the Amendment Act explain that the Framework

...will allow the government to provide funding for specialist disability services and supports under the *Disability Services Act 2006* directly to a person with a disability. This will provide people with a disability with more choice and control over their funding for disability services and supports.
17. The Disability Act provides that the Minister for Communities, Child Safety and Disability Services is responsible for approving funding for purposes of disability services. The insertion of section 43C in the Disability Act by the Amendment Act provides that the Minister may approve funding to:
  - a person with a disability, to enable the person to obtain relevant disability services; or
  - a relevant person for a person with a disability, to enable the relevant person to obtain relevant disability services for the person with a disability.
18. The participant, or those acting on their behalf, may also choose to self-direct their individual funding through either a:
  - (a) host provider model, which lets a participant make decisions with a host provider about whether they want to take some or all of the responsibility for buying and managing their disability supports and services, or
  - (b) direct payment model – where a participant takes all the responsibility for buying and managing their disability supports and services and receive funding directly from Disability Services (QLD).

***Host Provider***

19. A host provider is a non-government service provider that has been approved and certified to deliver services under the Disability Act and has been endorsed as a host provider. The host provider assists the participant to self direct their individual funding and to have choice and control over the supports and services they receive.

20. A potential host provider is required to submit an Expression of Interest (EOI) to Disability Services (QLD). By submitting the EOI, the potential host provider is indicating an interest and readiness in providing a host provider model to support the Framework.

21. The potential host provider's self-assessed readiness, capacity and accountability to deliver a model that supports the Framework is reviewed by Disability Services (QLD).

22. The potential host provider's EOI is reviewed by a panel of state-wide Disability Services representatives. An organisation that demonstrates appropriate readiness, capacity and accountability to deliver a model that supports the Framework will be listed as a host provider on the Department's website.

***Agreements***

23. A listed host provider can enter into an agreement with a participant. There is no standard format for the contracts between participants and host providers. However, section 3.2 of the Handbook sets the conditions for the agreement:

**3.2 The agreement between a person and the host provider**

An agreement between a person and the host provider must be signed before the host provider services commence.

The agreement outlines:

- the roles and responsibilities of both parties;
- how the host provider services will be delivered;
- fees associated with the host provider's services;
- timeframes for the host provider services;
- the management of the person's individual funding and who is responsible for specific tasks, such as monitoring of purchases;
- the service categories that the person has been assessed for;
- what will happen if the host provider has concerns over the quality of supports the person is buying;
- how to change the supports and services identified in the plan;
- complaints processes; and

- how to change host provider services (either changing the type of host provider services being received or changing to another host provider).

In signing the agreement, the participant is agreeing to the terms of the host provider's involvement in assisting them to self-direct their support. A host provider will need to ensure this agreement provides sufficient information and safeguards to conform to the requirements of the Disability Act.

## ***Fees***

24. A host provider must provide a schedule of fees outlining their services and costs.

25. The schedule of fees needs to reflect what services a participant can purchase from the host provider and the associated costs. It should also indicate any additional fees that may be charged and where these would apply.

26. The schedule of fees must be provided to, and discussed with, a person prior to entering into an agreement. Any negotiation of fees is between a person and the host provider.

27. Disability Services (QLD) will not be involved in the negotiation of host providers' fees.

## ***Direct Payments***

28. Section 43D of the Disability Act provides that if the Minister approves funding to a person under section 43C of the Disability Act, the person may enter into an Individual Funding Agreement (Agreement) with the Chief Executive for the funding on behalf of the Department.

29. Disability Services (QLD) is the service area of the Department that administers the Agreement. The Handbook sets out the background for the Agreement. A person is eligible to take part in an Agreement if they have a disability; are eligible for support from Disability Services; and:

- have ongoing individual (recurrent) funding from Disability Services;
- have support needs that are considered stable; and
- are able to undertake the financial, legal and administrative responsibilities required.

30. A relevant person may undertake these requirements and sign the Agreement on behalf of the participant.

31. A relevant person for the purposes of the Agreement is:
- (a) for an adult with a disability –
    - (i) a person nominated by the adult to deal with matters on behalf of the adult; or
    - (ii) a guardian or an administrator for the adult; or
    - (iii) an attorney appointed by the adult under an enduring power of attorney under the *Powers of Attorney Act 1998*; or
    - (iv) a member of the adult's support network, other than a paid carer for the adult within the meaning of the *Guardianship and Administration Act 2000*; or
  - (b) for a child with a disability – a parent of the child.
32. The participant is required to sign an Agreement with the Department agreeing to:
- manage the funds and maintain records in accordance with the Handbook;
  - participate in financial reviews as requested including affording departmental officers access to all documentation relevant to managing the direct payments funding;
  - participate in reporting in relation to the activities outlined in the Statement of Support and Funding; and
  - provide financial acquittals in accordance with the Handbook
33. The participant also agrees that the funds will only be used to purchase the relevant disability services outlined in the Statement of Support and Funding.
34. The Statement of Support and Funding details:
- the participant's priorities or goals;
  - the supports and services the participant is going to purchase with their individual funding to meet their assessment and funded need;
  - how these supports and services link to the participant's priorities or goals;
  - the service types the participant will purchase;
  - the type of provider the participant anticipates will provide the services;
  - how often the participant thinks they will receive the support;
  - approximate costs, including GST; and

- how the participant is going to meet any unfunded priorities or goals.

35. The funding provided through the Department can be used to purchase 'reasonable and necessary' supports and services that the participant has been assessed and funded for.

36. Participants are required to open up a bank account that is specifically for receiving the direct funds from the Department. The bank account needs to:

- be in the participant's own name, even if they have a relevant person sign the Agreement on their behalf;
- not be linked to a credit card or to any other account; and
- not have an overdraft facility.

37. Any interest earned on the account becomes part of the funds under the Framework and can only be spent in accordance with the participant's Statement of Support and Funding.

38. Participants are paid in quarterly instalments via electronic transfer into their nominated bank account.

## **Records**

39. Participants are required to keep records for seven years, including:

- a copy of the Agreement;
- any receipts or invoices for the supports and services purchased; and
- the approved Statement of Support and Funding, receipts, invoices, contracts with service providers and bank statements.

40. At the end of each financial year participants will need to complete a Record of Purchases. The Record of Purchases details:

- how much funding has been spent;
- what the funding was spent on; and
- if the purchases align with the Statement of Support and Funding

41. The Record of Purchases needs to be submitted to Disability Services one month after the end of the financial year. Disability Services may terminate the Agreement if this record is not provided by the due date.

42. At other times during the year Disability Services may ask a participant to complete a Record of Purchase to assist with any financial review of funds. Disability Services will give 14 days notice if this is to happen.

***Additional terms and conditions***

43. Any funds not spent must be returned to Disability Services within 14 days of the participant submitting their annual Record of Purchase. In some circumstances Disability Services may approve some unspent funds to be used in the next financial year. Participants must apply in writing to keep unspent funds.
44. Agreements and Statements of Support and Funding are for a set period of up to three years.
45. If a participant decides to end their Agreement, they must provide Disability Services with four weeks notice.
46. The Statement of Support and Funding will outline whether a participant will buy support and services from certified providers, non-certified providers, employ their own workers or engage a contractor.
47. A certified provider is a non-government disability service provider who must comply with the requirements of the Disability Act. To be certified, the service provider has met the requirements of the Department's quality assurance system.
48. Non-certified service providers are those that are available to anyone in the community and are not specifically disability services. These providers do not get funding from Disability Services. Disability Services does not monitor or regulate the services provided by non-certified providers. These may be regulated under laws that apply to businesses, such as Australian Consumer Law.

**Ruling**

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49. The funds received under the Framework are not ordinary income and do not form part of a participant's assessable income under section 6-5.
50. The funds received under the Framework:
- are not given or granted to participants in relation to employment or services rendered under section 15-2; and
  - are not assessable recoupments of the participant under Subdivision 20-A.
51. The interest earned on funds deposited into a participant's bank account under the Framework does not form part of the participant's assessable income.
52. Any losses or outgoings incurred in managing or obtaining the disability services under the Framework are not deductible under section 8-1 or any other provision of the ITAA 1997.

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53. The amounts paid by participants for disability services using funds made under the Framework are not treated as rebatable amounts for the purposes of the medical expenses tax offset under section 159P of the ITAA 1936.

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**Commissioner of Taxation**

12 June 2013

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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.*

54. A payment or other benefit received by a taxpayer is assessable income if it is:

- income according to ordinary concepts (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

55. Under subsection 6-5(1) an amount is assessable income if it is ordinary income.

56. In determining whether an amount is ordinary income, the courts have established the following principles:

- 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;
- whether the payment received is income depends upon a close examination of all relevant circumstances; and
- whether the payment received is income is an objective test.

57. 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 character of the payment in the hands of the participant;
- the form of the payment; that is, whether it is received as a lump sum or periodically; and
- the motive of the person making the payment. Motive however, is rarely decisive as in many cases a mixture of motives may exist.

58. A participant does not receive funds under the Framework as an employee of the Department or in relation to the carrying on of a business. Therefore the funds are not the product of any employment or any business.

59. Funds paid to a taxpayer for services rendered can be deemed to be assessable income, even though the taxpayer does not provide those services as an employee or in carrying on a business. It is therefore necessary to determine whether the funds under the Framework were received for services rendered.

60. Under the terms of the Agreement, while a participant obtains and manages the goods and services, they do not receive any amount as a reward for taking on this role. The Agreement permits the payments under the Framework to be used only for purchasing care, support or assistance the person with the disability may need and meeting the direct costs of managing these supports. The participant must account for the use of the payments and must repay any money not used for approved purposes.

61. In these circumstances, the payments received under the Framework are not the product of any services rendered.

62. With respect to the character of payments received under the Framework, In *Federal Commissioner of Taxation v. Rowe* (1996-1997) 187 CLR 266 at 279, Brennan CJ, Dawson, Toohey and McHugh JJ held:

The character of a receipt is assessed by reference to its character in the hands of the taxpayer, not the character of the expenditure which produces the payment to the taxpayer. And this is so in the case of a voluntary payment.

63. The character of the payment in the hands of the participant in the present case is a payment for a specific purpose; namely, for the purpose of obtaining the care, support or assistance the person with the disability may need. The participant has to repay any amount that is unspent at the end of the year. The funds in the hands of the participants do not have the character of income. The participant in the Framework is essentially managing the payments on behalf of the Department and is not in receipt of them in a personal sense.

64. As to the form of funds under the Framework, there is an element of periodicity in the receipt of the funds in that they are paid in instalments. However, in *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568, Fullagar J held that this factor while not unimportant is not decisive of whether or not funds are characterised as ordinary income.

65. With respect to motive, a primary motive of the Department in providing direct funds is to give participants non-material benefits such as increased dignity, self-determination and capacity to integrate into the life of the community.

66. The nature of the relationship between the recipient and the Department is not altered if the participant chooses to self-direct their funding through the host provider model. The Department's motive in making the payment via a host provider is purely to discharge its objectives under the Disability Act.

67. Consideration of the relevant circumstances of the funds and the relevant factors for determining whether the funds are ordinary income in the hands of a participant for the purposes of section 6-5, leads to the conclusion that the funds are not ordinary income of the participants.

68. Likewise funding delivered via the host provider model is not income according to ordinary concepts in the hands of the host providers. Regardless of how the plan for support and funding via the host provider model is structured, responsibility for the funds is retained by the participant. A participant may choose to purchase traditional disability services from a host provider but they must do so through a separate and independent component of the host provider's business activities. There is a clear distinction between the administration of the self-directed support arrangement and the delivery of traditional disability services.

### **Statutory income**

69. Section 6-10 includes in assessable income amounts that are not ordinary income. These amounts are called statutory income. A list of the statutory income provisions can be found in section 10-5. That list includes a reference to section 15-2 and Subdivision 20-A.

### **Employment or services rendered**

70. Section 15-2, provides that assessable income shall include:  
... the value to you of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you ...

71. As discussed above, the participants do not receive the funds for any employment or services rendered. Therefore the funds received by the participants are not statutory income under section 15-2.

### **Assessable recoupment**

72. Subdivision 20-A operates to include in assessable income amounts received as recoupments of specified losses or outgoings allowed or allowable as deductions. The relevant provision is subsection 20-20(3) which provides that an amount is an assessable recoupment of a loss or outgoing if a taxpayer:

- receives the amount (except by way of insurance or indemnity), and
- can deduct an amount for the loss or outgoing in the current year or has deducted or can deduct an amount for it in an earlier year under a provision listed in the tables at section 20-30.

73. As the funds under the Framework are not made by way of insurance or indemnity and no deduction is allowable or would be allowable to the participant in respect of the expenditure incurred for the disability services (see paragraph 77 of this Ruling),, the funds under the Framework are not assessable recoupments and therefore no amounts are included in participants' assessable incomes under Subdivision 20-A.

### ***Interest earned***

74. Interest earned on money held in a bank account is usually ordinary income and assessable to the owner or owners of the bank account.

75. In the present case, however, any interest accrued on funds deposited in a separate bank account under the Framework forms part of the funding and, for the reasons referred to above with respect to the funds themselves, is not ordinary income.

76. As there is no provision listed in section 10-5 which includes bank interest as statutory income (see paragraph 69 of this Ruling), bank interest accruing to funds under the Framework in a participant's bank account is not statutory income of the participant.

### ***General deductions***

77. As the funds received by the participants are not assessable as either ordinary or statutory income, the losses and outgoings that are incurred in connection with those funds are not allowable as deductions under section 8-1 or any other provision of the ITAA 1997. Consequently, expenses incurred by the participant in acquiring the goods and services in accordance with their approved Statement of Support and Funding are not deductible.

### ***Medical expenses tax offset***

78. Section 159P of the ITAA 1936 provides that an amount paid by a taxpayer as medical expenses less any amount paid, or entitled to be paid, to the taxpayer or any other person in respect of those medical expenses, is a rebatable amount for the purposes of the medical expenses tax offset.

79. Medical expenses include payments:

- to a legally qualified medical practitioner, nurse or chemist, or a public or private hospital, in respect of an illness or operation;
- for therapeutic treatment administered by direction of a legally qualified medical practitioner; and

- made as remuneration of a person for services rendered by him as an attendant of a person who is blind or permanently confined to a bed or invalid chair.

80. Payments made by the participants for supports and services may qualify as medical expenses. However those expenses must be reduced by any payment received or receivable in respect of the expenses to determine the rebatable amount. As the participant will receive funds from the Department under the Framework in respect of these expenses, there will be no amount which can be treated as a rebatable amount for the purposes of the medical expenses tax offset.

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

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81. 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 2006/10

*Subject references:*

- assessable income
- assessable recoupments
- deductions and expenses
- disabled care expenses
- income
- medical expenses
- medical expenses rebates
- rebates and offsets

*Legislative references:*

- TAA 1953
- ITAA 1936
- ITAA 1936 159P
- ITAA 1997
- 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
- ITAA 1997 Subdiv 20-A
- ITAA 1997 20-20(3)
- ITAA 1997 20-30
- TAA 1953
- Copyright Act 1968
- Disability Services Act 2006 (QLD)

*Case references:*

- FC of T v. Dixon (1952) 86 CLR 540; [1952] HCA 65
- FC of T v. Rowe (1997) 97 ATC 4317; (1997) 143 ALR 406; (1997) 35 ATR 432; (1997) 71 ALJR 624; [1997] 7 LegRep 2; (1997) 187 CLR 266

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ATO references

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