


CR 2019/17 - Income tax: assessability of payments under the QLD Taxi and Limousine Industry Assistance Scheme

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Class Ruling

Income tax: assessability of payments under the QLD Taxi and Limousine Industry Assistance Scheme

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❶ This publication provides you with the following level of protection:

This publication (excluding appendices) 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.

Summary – what this Ruling is about

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

Relevant provisions

2. The relevant provisions dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 20-25 of the ITAA 1997
- section 104-25 of the ITAA 1997
- section 118-20 of the ITAA 1997.

All 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 are Australian resident taxpayers who:

- receive a payment under the QLD Taxi and Limousine Industry Assistance Scheme (an Assistance Payment), and
- hold a relevant QLD taxi or limousine licence (a Licence), as referred to in section 5 of the *Taxi and Limousine Industry Assistance Scheme Regulation 2016* (QLD) (Assistance Regulations) as a capital asset from the time of acquisition up to the time immediately before the relevant day specified in Schedule 1 of the Assistance Regulations.

Qualifications

4. This Ruling does not address the particular circumstances of the holder of a Licence immediately before the relevant day specified in Schedule 1 of the Assistance Regulations where the holder has permanently and completely exited the taxi and/or limousine industry, or that has evidence that they have undertaken a process to permanently and completely exit the taxi and/or limousine industry, at the time of receiving the Assistance Payment. A different tax outcome to that outlined in this Ruling may be applicable in such circumstances.

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 8 to 25 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.

Date of effect

7. This Ruling applies from 1 July 2016 to 30 June 2019. The Ruling continues to apply after 30 June 2019 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 *Public Rulings*).

Scheme

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

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

9. On 7 October 2015, the Queensland Government announced an independent review of taxi, limousine and rideshare services in Queensland.

10. The review resulted in the release in July 2016 of the *Opportunities for personalised transport review White Paper*¹ (White Paper). Recommendation 1 of the White Paper states as follows:

That ride-sourcing be permitted in [South East Queensland] under a new annual licence category issued to the driver who has completed minimum safety checks. The annual fee will be set at a cost recovery level and will also allow for a provisional licence to be issued. The provisional licence will allow for a low cost entry pathway for new drivers. The driver may only use a vehicle that has the correct [Compulsory Third Party] insurance and registration and meets the regulated safety requirements.

11. Following consideration of the White Paper, on 11 August 2016 the Queensland State Government announced reforms to the personalised transport industry in Queensland. The following changes were outlined in the media announcement on 11 August 2016:

Under the changes from 5 September 2016:

- Ride-booking services will be legal for drivers holding a valid driver authorisation and safety inspected vehicle.
- Taxis will continue to have exclusive access to rank and hail and the Government will provide \$5.6 million to incentivise wheelchair accessible taxis to ensure personalised transport remains accessible for all Queenslanders.
- 80 regulations will be cut, and the taxi and limousine industry will benefit from \$4.3 million in waived fees over the next 12 months.
- Consumers will have more choice and benefit from consistent safety standards, fare estimates and itemised receipts on request, and more affordable travel.

¹ Opportunities for Personalised Transport Taskforce, *The future of Queensland's personalised transport industry White Paper*, Department of Transport and Main Roads, Brisbane, released July 2016.

- The Queensland Government will establish a \$100 million industry adjustment assistance package to help taxi and limousine licence holders adjust to more competition and take advantage of new opportunities – without a fare levy.

12. Prior to the introduction of these reforms, a person was prohibited from providing a taxi or limousine service unless the vehicle providing the service was a licensed taxi or limousine.

13. The first stage of reforms announced on 11 August 2016 was legislated in September 2016 through amendments made to the *Transport Operations (Passenger Transport) Regulation 2005* (the PT Regulation) by the *Transport and Other Legislation (Hire Services) Amendment Regulation 2016 (Qld)*.

14. Section 52A of the PT Regulation, which commenced 5 September 2016, operates to exempt taxi services provided with a prior booking from the requirement to use licensed vehicles, thereby allowing these services to operate legally subject to meeting relevant safety requirements.

15. Under these amendments, specific provisions for 'booked hire services' and 'booked hire vehicles' were introduced for the first time. A 'booked hire service' is defined as a 'public passenger service provided by the hire of a motor vehicle and the person to drive the vehicle other than an excluded public passenger service and a rank and hail service.' A 'booked hire vehicle' is defined as a 'motor vehicle, other than a limousine or taxi, used to provide a booked hire service while it is being used to provide the service'.

16. On 1 December 2016, the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* (the Authorising Act) received assent. Clause 141 of the Authorising Act entered force on 9 December 2016 and amended the *Transport Operations (Passenger Transport) Act 1994* to allow for the making of regulations for the provision of financial assistance to certain eligible participants in the taxi and limousine industry.

- (1) A regulation may provide for a scheme for the payment of financial assistance to certain persons who—
 - (a) have held or hold—
 - (i) a taxi service licence; or
 - (ii) limousine service licence, other than a special purpose limousine service licence; or
 - (b) have been or are—
 - (i) an accredited operator of a taxi service; or
 - (ii) an accredited operator of a service for the administration of taxi services; or
 - (iii) an accredited operator of a limousine service, other than a limousine service provided under a special purpose limousine service licence.

- (2) For example, a regulation may provide for—
- (a) the criteria for eligibility to receive financial assistance; or
 - (b) proof of eligibility; or
 - (c) applications for financial assistance; or
 - (d) the period within which applications for financial assistance may be made; or
 - (e) the provision of additional information or records by applicants; or
 - (f) the determination of applications for financial assistance; or
 - (g) conditions on payment of financial assistance; or
 - (h) the review of decisions relating to applications for financial assistance; or
 - (i) the amount payable to a person who is eligible for financial assistance; or
 - (j) the repayment of all or part of financial assistance paid to a person who—
 - (i) was not eligible for the assistance; or
 - (ii) did not comply with conditions on payment of the assistance.
- (3) This section, and any regulation made under this section, expire 2 years after this section commences.

17. On 15 December 2016, the Assistance Regulations were made. Section 7 of the Assistance Regulations states the purpose of the Assistance Payment in the following terms:

The purpose of financial assistance that may be given under the scheme is to assist relevant holders of relevant licences to adjust to changes in the taxi service industry and limousine service industry.

18. Section 11 defines the eligibility criterion for the Assistance Payment as:

A person is eligible for financial assistance under the scheme if the person is the relevant holder of a relevant licence.

19. Section 7A defines who is the relevant holder and section 5 defines a relevant licence is either:

- (a) a taxi service licence in force immediately before the relevant day, or
- (b) a limousine service licence, other than a special purpose limousine service licence, in force immediately before the relevant day.

20. The relevant day is defined as being 11 August 2016 in Schedule 1 of the Assistance Regulations.

21. Section 8 of the Assistance Regulations defines an Assistance Payment as follows:

The *transitional assistance amount* for the relevant holder of a relevant licence is—

- (a) for a relevant holder in relation to a taxi service licence—
 - (i) if the relevant holder held only 1 taxi service licence immediately before the relevant day—\$20,000 for the licence; or
 - (ii) if the relevant holder held 2 or more taxi service licences immediately before the relevant day—\$40,000 in total for all the licences; or

Example for paragraph (a)(ii)—

If A held 3 taxi service licences immediately before the relevant day, the transitional assistance amount for A is \$40,000 in total for all the licences.

- (b) for a relevant holder in relation to a limousine service licence—\$10,000 for each limousine service licence, other than a special purpose limousine service licence, held by the relevant holder immediately before the relevant day.

22. The 'Industry Adjustment Assistance' fact sheet published by the Queensland Government states:

The Queensland Government has established a \$100 million Industry Adjustment Assistance Package (IAAP) to assist the existing taxi and limousine service licence industry to transition to a more competitive market.

23. The Queensland Government invited eligible taxi and limousine licence holders (Licence holders) to apply for transitional assistance commencing in late December 2016.

24. Licence holders who held a Licence immediately before 11 August 2016 were eligible to receive the Assistance Payment, with limited exceptions. This includes individuals, companies, superannuation funds and trusts.

25. Processing and payment of correctly completed applications commenced in early January 2017 and applications closed on 24 March 2017.

Ruling

26. The Assistance Payment received by a taxpayer under the Assistance Regulations is assessable as ordinary income under section 6-5.

27. The Assistance Payment received by a taxpayer under the Assistance Regulations constitutes the proceeds from the happening of CGT event C2 under section 104-25. However, pursuant to section 118-20, any capital gain that is made on CGT event C2 will be reduced to nil because the Assistance Payment will be included in ordinary income under section 6-5.

Commissioner of Taxation22 February 2019

Appendix 1 – Explanation

■ 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

28. Subsection 6-5(1) provides that assessable income includes income according to ordinary concepts (ordinary income). Taxation legislation does not provide a definition of 'ordinary income'.

29. The characteristics of ordinary income have been developed by case law and generally fall into three categories:

- income from providing personal services
- income from property, or
- income from carrying on a business.

30. The character of the single lump sum Assistance Payment is determined by examining the character of the whole payment in the hands of the recipient. As such, the Commissioner will have regard to all circumstances which give rise to the payment.

31. The distinction between income and capital receipts has been likened to the difference between a tree and the fruit of a tree. The High Court in *FC of T v. D.P. Smith* (1981) 147 CLR 578; 81 ATC 4114; (1981) 11 ATR 538 made the following observations in relation to payments made under a personal disability insurance policy:

If the ability to earn is the tree, and income the fruit thereof, a policy of insurance against impairment of the fruit-bearing capacity of the tree may well take the form of providing the fruit until such time as the tree recovers its proper role. The degree of correspondence, if any, between the moneys payable under the policy and the actual pecuniary loss of revenue suffered by the insured is a relevant factor, but it is not necessary to look for an indemnity measured with any precision against the loss. Any fruit is better than none, whether or not it represents adequate compensation for the loss.

32. In that case, features of the insurance policy made it unlikely that payments received under the policy would bear any direct correlation to the actual loss of earnings suffered by the insured individual. Despite this, the Court held that the purpose of the policy was to diminish the adverse economic consequences of injury by accident and to provide indemnity against income loss arising from the inability to earn.

33. The Licences are property of the Licence holders.

34. The sole qualification to be eligible to receive a payment under the Assistance Scheme is that the applicant be a Licence holder on the relevant date.

35. Payments received in relation to the holding of a Licence can be characterised as capital receipts or income receipts.

36. Ordinarily a capital receipt derived in respect of an asset such as a licence comes as a result of, or has a nexus to, an alteration, cancellation, sterilisation of the rights associated with the licence.²

37. The Assistance Payments to a Licence holder do not diminish, alter, cancel, affect or sterilise the Licence or any of the rights embodied in the Licence. The rights and obligations attaching to a Licence remain the same before and after the completion of the Assistance Payments. There is neither a mandated cessation, restriction or prohibition of the income earning activity permitted by the Licence nor the compulsory exit from, or discontinuance of, the industry or a sector of the industry.

38. It has been submitted that one result of the expansion of the market for taxi and hire car services is that existing Licences have lost value. However, even if that is true, a loss of value will not alone bring about a tax recognition event.

39. Nothing in the enabling statute (that is, the Assistance Regulations) states that the Assistance Payment is made in compensation for any lost value of the Licence. Nor is the Assistance Payment a recoupment, refund or reimbursement of the original outlay to acquire the Licence. Consequently section 20-25 is not engaged.

40. Rather, the situation is one in which a receipt is derived by an asset holder as a consequence of owning the asset but the asset is unaffected and unchanged by the payment having been made.

41. In *Federal Commissioner of Taxation v. McNeil* (2007) 229 CLR 656; [2007] HCA 5; 2007 ATC 4223; (2007) 64 ATR 431 (*McNeil*) the High Court (by a majority) endorsed the principle that a gain derived from holding property has the character of income and this includes a gain to an owner who receives the gain passively. The majority of the High Court also authorised and affirmed the application of the principles of characterisation espoused in, among others, *Federal Commissioner of Taxation v. Montgomery* (1999) 198 CLR 639; [1999] HCA 34; 99 ATC 4749; (1999) 42 ATR 475 and *Eisner v. Macomber* (1920) 252 US 189.

42. The essence of *McNeil* is that a person who owns property, derives a gain from that property and does not dispose of, or otherwise 'affect', the property by deriving the gain, derives income. An arrangement that is structured in such a way as to provide the owner of property with a gain from that property which is severed from and does not affect the property will result in the gain being treated as income of the recipient, in accordance with *McNeil* and the wider principles which it applies.

² *Californian Oil Products Ltd (in liq) v. Federal Commissioner of Taxation* (1934) 52 CLR 28 at 46; *Glenboig Union Fireclay Co Ltd v. Inland Revenue Commissioners* [1922] SC (HL) 112; (1922) 12 TC 427.

43. A receipt can be income from property although it did not directly flow from that property. The gain in *McNeil* was a direct result of the execution of deed polls by the company and not directly from the taxpayer's ownership of shares in the company. This is not a material circumstance so long as the receipt is not a result of, or related to a disposal of the property or an alteration to its profit-yielding structure.

44. The situation with respect to a Licence holder in receipt of an Assistance Payment is similar to that of the shareholder in *McNeil* in that, like the shareholder in *McNeil*, the Licence holder is not required to give up a part of a profit yielding structure, or their rights under the Licence, in return for the payment. Like the shares in *McNeil* which remain intact and untouched, the underlying Licence is not altered, varied, affected, diminished or disposed of in any way due to or in exchange for the Assistance Payment.

45. As was the case in *McNeil*, the Assistance Payment similarly does not represent, and is not a refund of, the capital the taxpayer originally outlaid to acquire the Licence.

46. For these reasons, Assistance Payments are characterised as something of independent value which was the product of, and severed and detached from the Licence. As such, Assistance Payments are ordinary income in the hands of the recipient and assessable under section 6-5. Ordinary income is assessable under subsection 6-5(1) in the income year of derivation which for most taxpayers will be the income year in which the payment has been received.

Capital gains tax

47. CGT event C2 happens under section 104-25 when the right to receive the Assistance Payment ends; this happens at the time the payment is made in accordance with paragraph 104-25(2)(b), because in this instance there has been no contract entered into resulting in the asset ending (in accordance with paragraph 104-25(2)(a)).

48. As the Assistance Payment is included in assessable income under section 6-5, any capital gain made from the CGT event C2 is reduced to nil under section 118-20.

Appendix 2 – Detailed contents list

49. 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; CR 2017/15

Legislative references:

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 20-25
- ITAA 1997 104-25
- ITAA 1997 104-25(2)(a)
- ITAA 1997 104-25(2)(b)
- ITAA 1997 118-20
- TAA 1953
- Heavy Vehicle National Law and Other Legislation Amendment Act 2016 (QLD) Clause 141
- Taxi and Limousine Industry Assistance Scheme Regulation 2016 (QLD)
- Taxi and Limousine Industry Assistance Scheme Regulation 2016 (QLD) 5
- Taxi and Limousine Industry Assistance Scheme Regulation 2016 (QLD) 7
- Taxi and Limousine Industry Assistance Scheme Regulation 2016 (QLD) 7A
- Taxi and Limousine Industry Assistance Scheme Regulation 2016 (QLD) 8
- Taxi and Limousine Industry Assistance Scheme Regulation 2016 (QLD) 11
- Taxi and Limousine Industry Assistance Scheme Regulation 2016 (QLD) Sch.1

- Transport and Other Legislation (Hire Services) Amendment Regulation 2016 (QLD) 52A
- Transport Operations (Passenger Transport) Act 1994 (QLD)
- Transport Operations (Passenger Transport) Regulation 2005 (QLD)

Case references:

- Californian Oil Products Ltd (in liq) v. Federal Commissioner of Taxation (1934) 52 CLR 28
- Eisner v. Macomber (1920) 252 US 189
- Commissioner of Taxation v. Smith (1981) 147 CLR 578; 81 ATC 4114; 11 ATR 538
- Federal Commissioner of Taxation v. McNeil (2007) 229 CLR 656; [2007] HCA 5; 2007 ATC 4223; 64 ATR 431
- Federal Commissioner of Taxation v. Montgomery (1999) 198 CLR 639; [1999] HCA 34; 99 ATC 4749; 42 ATR 475
- Glenboig Union Fireclay Co Ltd v. Inland Revenue Commissioners [1922] SC (HL) 112; (1922) 12 TC 427

Other references:

- Opportunities for Personalised Transport Taskforce, *The future of Queensland's personalised transport industry White Paper*, Department of Transport and Main Roads, Brisbane

ATO references

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Income tax ~~ Capital gains tax ~~ Cost base and

BSL: reduced cost base
PGH

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