

CR 2019/49 - SA Lifetime Support Scheme - under the self-directed support program of services for assessed treatment and care needs



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Class Ruling

SA Lifetime Support Scheme – under the self-directed support program of services for assessed treatment and care needs

❶ Relying on this Ruling

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

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or pay any penalties or interest in respect of the matters covered by this Ruling

Further, if we think that this Ruling disadvantages you, we may apply the law in a way that is more favourable to you.

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What this Ruling is about

1. This Ruling sets out tax consequences of payments made under the Lifetime Support Scheme (LSS), which is a no-fault scheme which provides necessary and reasonable treatment, care and support for people who suffer serious lifelong disabilities in motor vehicle accidents in South Australia, with reference to:

- 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
- Subdivision 20-A of the ITAA 1997.

2. Full details of the scheme are set out in paragraphs 12 to 27 of this Ruling.

Who this Ruling applies to

3. This Ruling applies to:

- persons who have been accepted as participants in the scheme established under the *South Australian Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* (MVAA)
- participants' authorised representatives,

who enter into a Self-Directed Support Agreement (Agreement) for assessed treatment and care needs, with the Lifetime Support Authority of South Australia (Authority). In this Ruling these persons (including their authorised representatives) are referred to as 'participants'.

When this Ruling applies

4. This Ruling applies from 1 July 2014. 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*).

Ruling

5. The payments received by a participant under the scheme are not assessable income under section 6-5.¹

6. The payments received by a participant under the scheme are not given or granted in relation to employment or services rendered and therefore not assessable statutory income under section 15-2.

7. Payments that only relate to private or domestic 'treatment, care and support needs' do not give rise to assessable recoupments for the purposes of Subdivision 20-A and losses or outgoings incurred in managing or obtaining those payments are not deductible under section 8-1.

8. However, to the extent the payments are for 'treatment, care and support needs' in relation to education and vocational training, or workplace modification that give rise to assessable recoupments for the purposes of Subdivision 20-A, losses or outgoings incurred in managing or obtaining those payments are deductible under section 8-1. However, an assessable recoupment under the Agreement will always be the same amount as the deductible loss or outgoing, leading to a net assessable amount of nil.

9. The interest earned on funds deposited into an account specially maintained for the purposes of receiving the payments are not ordinary or statutory income of the participant.

10. Losses or outgoings incurred in managing or obtaining care under the Agreement are not deductible under section 8-1 or any other provision of the ITAA 1997, where the participant's payments only relate to private or domestic 'treatment, care and support needs'.

11. From the 2014 income year until the end of the 2019 income year, a participant can only claim the medical expenses rebate for medical expenses relating to disability aids, attendant care or aged care. To the extent the participant's medical expenses are fully covered by the payments from the Authority, there will be no amount which can be treated

¹ All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

as a rebatable amount for the purposes of the medical expenses tax offset under section 159P of the ITAA 1936.

Scheme

12. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

13. The following documents, or relevant parts of them form part of and are to be read with the description:

- Application for Class Ruling dated 18 December 2018.
- Self-Directed Support Agreement: Direct self-purchasing of services for assessed treatment and care needs (The Agreement).
- Lifetime Support Authority MyWay Program handbook.
- MVAA.

The Scheme

14. The MVAA provides the legislative basis for the LSS which provides funds for the 'treatment, care and support needs' of persons who suffer catastrophic injuries such as spinal damage or brain trauma in motor vehicle accidents.

15. A person who has suffered a motor vehicle injury is eligible for funding provided by the Authority in respect of the injury if the person's injury satisfies the criteria specified in the LSS Rules for eligibility for participation in the scheme.

16. Participation in the scheme may be as a lifetime participant or an interim participant and for that purpose the LSS Rules establish the criteria for eligibility for lifetime participation and criteria for eligibility for interim participation in the scheme.

17. The Authority makes an assessment of the 'treatment, care and support needs' of a participant in the scheme that are necessary and reasonable in the circumstances in relation to the participant's motor vehicle injury. An assessment of 'treatment, care and support needs' is to be made in accordance with the LSS Rules.

18. Section 4 of the MVAA contains the following definition of 'treatment, care and support needs':

- (1) For the purposes of this Act, the **treatment, care and support needs** of a participant in the Scheme are the participant's needs for or in connection with any of the following:
 - (a) medical treatment (including pharmaceuticals);
 - (b) dental treatment;
 - (c) rehabilitation;
 - (d) ambulance transportation;
 - (e) respite care;
 - (f) attendant care and support services;
 - (g) aids and appliances;
 - (h) prostheses;
 - (i) education and vocational training;

- (j) home and transport modification;
 - (k) workplace modification;
 - (l) such other kinds of treatment, care, support or services as may be prescribed by the regulations for the purposes of this subsection;
 - (m) such other kinds of treatment, care, support or services as may be determined by the Authority (either generally, for specified classes of cases, or for a particular person).
- (2) Despite subsection (1), but subject to subsection (1)(m), the treatment, care and support needs of a participant do not include any treatment, care, support or services declared by the LSS Rules to be excluded treatment, care and support needs.

19. The Authority is to pay for all of the reasonable expenses incurred by or on behalf of a person in relation to the assessed 'treatment, care and support needs' of the person while the person is a participant in the scheme.

20. As an alternative to paying the expenses for which it is liable under this section as and when they are incurred, the Authority may pay those expenses by the payment to the participant of an amount to cover those expenses over a fixed period pursuant to an agreement between the Authority and the participant for the payment of those expenses by the participant.

The Agreement

21. Under the scheme, the Authority enters into an Agreement with a participant. The Agreement enables the participant to manage their 'assessed treatment, care and support needs'.

22. The Agreement stipulates that participants must only spend the monies received from the Authority for approved treatment, care and support needs (Clause 28).

23. The participant has an Allocation of funds made to them based on the MyPlan associated with the Agreement. The Allocation is reviewed at least every 12 months.

24. The Allocation is paid in regular instalments under the Agreement. The Authority will only pay the instalments by electronic funds transfers into a bank account in the participant's name set up for the sole purpose of the Agreement (Clauses 10, 11 and 20).

25. The Agreement provides that any interest earned by the account must be used as if those amounts of interest were funds received from the Lifetime Support Authority under the Agreement (Clause 13).

26. It is intended that there will be no excess monies under the Agreement, that is, no monies that are not spent by the participant on approved services. Excess or accumulated funds in the participants account may lead to the withholding of or reduction in instalment amounts, requests for repayments, or be taken into account for future instalments, upcoming expenses, changes to 'assessed treatment, care and support needs' etcetera (Clauses 22 to 26).

27. Participants are required to maintain records (such as an expenditure declaration form, receipts etcetera) for substantiation purposes (Clauses 35 to 41).

Appendix 1 – Explanation

ⓘ *This Explanation 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.*

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Assessability of payments from the Authority***Ordinary income***

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

29. It is a long accepted legal principle that you cannot derive income as ordinary income if you are not beneficially entitled to the amount (see for example, *Countess of Bective v Federal Commissioner of Taxation* [1932] HCA 22). Notwithstanding the bank account is in the participant's name, they have no rights to the monies in the account – they merely direct it to the agreed payment of services.

30. For these reasons, where the money is expended as it should be, the payments are not derived by the participant, and therefore those payments are not assessable as ordinary income in the hands of the participant under section 6-5.

Statutory income

31. 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.

32. Relevantly, that list includes a reference to section 15-2 and Subdivision 20-A.

Employment or services rendered

33. 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 ...

34. The participants do not receive monies under the Agreement for any employment or services rendered. Therefore the payments to the participants are not statutory income under section 15-2.

Assessable recoupment

35. Under section 20-20 of Subdivision 20-A, a receipt is an assessable recoupment if:

- it is not income under ordinary concepts or otherwise assessable
- it is received as recoupment of a loss or outgoing (as defined by section 20-25), and
- the taxpayer has deducted or can deduct an amount for a loss or outgoing in the current year or an earlier year under a provision listed in section 20-30.

36. The majority of the instalments paid for the Allocation are expected to be expended on participants 'treatment, care and support needs' which are considered to be private in nature, with no deduction allowable to the participant for them. The payments for private expenses received by participants from the Authority are not assessable recoupments and therefore no amounts are included in their assessable income under Subdivision 20-A. However, where a deduction is allowable or would be allowable to the participant in respect of the expenditure incurred for the 'treatment and care needs', the payments received by them from the Authority would be assessable recoupments and therefore included in their assessable income under Subdivision 20-A.

Assessability of interest income

37. Where the payments of the Allocation occurs in regular instalments over a fixed period, the participant is required to set up and maintain a discrete bank account in the name of the participant solely for direct payments from Lifetime Support Authority in respect of the agreement with the participant. Any funds in that bank account relates to the payment of expenses relating to the treatment, care and support needs of the participant.

For the participant

38. As explained above, the participant does not have rights to the monies in that account. Consequently, the interest income earned from monies in that bank account are not derived by the participant, and therefore those amounts are not assessable as ordinary income in the hands of the participant under section 6-5.

For the Authority

39. The monies in the account belong to the Authority, that, amongst other things, it can recover or factor in making the payments for the next period.

40. The Authority would qualify as a State/Territory body under section 24AQ or section 24AR of Division 1AB of the ITAA 1936.

41. Consequently, the ordinary and statutory income of the Authority is exempt from income tax pursuant to section 24AM of the ITAA 1936. Relevantly, the Lifetime Support Authority is:

- (a) a body corporate established by State or Territory legislation (having regard to the accepted legal characterisation of a body corporate, being an artificial

entity having a separate legal existence to the individuals that comprise the body, that has the power to act, hold property, enter into legal contracts, sue and be sued in its own name, the Commissioner considers that bodies incorporated by statute, that is an organisation that is registered pursuant to a statute or is established and incorporated under its own statute (for example, statutory corporations), is a body corporate)

- (b) is not a company limited by shares, and
- (c) an entity where the power to appoint, dismiss or direct its governing body is held by a government entity.

42. Therefore, the interest income of the Authority is exempt from income tax.

Deductibility of expenses incurred under the Agreement

43. Where the payments received by the participants are not assessable as either ordinary or statutory income, the losses and outgoings that are incurred in connection with those payments are not allowable as deductions under section 8-1 or any other provision of the ITAA 1997.

44. Where the payments received by the participants are assessable recoupments, the losses and outgoings that are incurred in connection with those payments are allowable as deductions under section 8-1.

Deductibility of expenses incurred in relation to treatment, care and support needs

45. Relevantly, there is an entitlement to a deduction under section 8-1 for expenses, to the extent those expenses are incurred in gaining or producing assessable income, or necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income, and it is not of a capital, private or domestic nature.

46. Whilst many of the items relate to matters that are private or domestic in nature, section 4 of the MVAA provides that 'treatment, care and support needs' of a participant in the scheme can encompass a participant's needs for or in connection with education and vocational training, or workplace modification.

47. Consequently, there may be treatment, care and support need expenses that are deductible, for example:

- where the education or vocational training qualifies for self-education expenses, a deduction may be available under Division 40, for example, for modified technical instruments and equipment, computers, calculators, professional libraries, filing cabinets and desks (see Taxation Ruling TR 98/9 *Income tax: deductibility of self-education expenses incurred by an employee or a person in business*), and
- a deduction may be available under section 8-1 for modified tools, equipment etcetera for work (see *Tools, equipment and other assets*).

48. In the event that an amount is expended that is a deductible loss or outgoing to the participant, the net assessable amount in their tax return will be nil as the deduction will be equal to the assessable recoupment.

Medical expenses tax offset

49. 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. 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 or her as an attendant of a person who is blind or permanently confined to a bed or invalid chair.

50. The payments made by the participant 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.

51. Under the scheme, eligible medical expenses may be covered in full or in part (see for example, section 41 of the MVAA). Consequently, the participant will need to factor in to what extent the payments from the Authority under the agreement in respect of these expenses affect the rebatable amount for the purposes of the medical expenses tax offset. To the extent the medical expenses are fully covered there will be no amount which can be treated as a rebatable amount for the purposes of the medical expenses tax offset.

52. Relevantly, from 2015–16 until 2018–19, taxpayers can only claim the medical expenses rebate for medical expenses relating to disability aids, attendant care or aged care. The medical expense tax offset will not apply from the 2019–2020 income year.

References*Previous draft:*

Not previously issued as a draft

Related Rulings/Determinations:

TR 98/9; TR 2006/10

Legislative references:

- ITAA 1936
- ITAA 1936 24AM
- ITAA 1936 24AQ
- ITAA 1936 24AR
- 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
- ITAA 1997 20-25
- ITAA 1997 20-30
- ITAA 1997 Div 40
- TAA 1953
- Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013

Case references:

- Countess of Bective v Federal Commissioner of Taxation [1932] HCA 22; (1932) 47 CLR 417

ATO references

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