



## ATO Interpretative Decision

ATO ID 2006/122


### Income Tax

### Assessable income: derivation of Commonwealth funding - Cooperative Research Centres (CRC) Programme

 This ATO ID has been amended to update references to Taxation Ruling TR 2006/3, which is the final version of TR 2005/D17

FOI status: may be released

Status of this decision: Decision Current

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## Issue

Are instalments paid to a taxpayer (CRC Company) under the Commonwealth Agreements for the 2004 and 2006 Selection Rounds of the CRC Programme (the Agreements), derived at the time of receipt for the purposes of section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)?

## Decision

No. Instalments paid to a CRC Company under the Agreements are not derived for the purposes of section 6-5 of the ITAA 1997 until applied toward the conduct of the 'Activities', as specified in the Agreements.

## Facts

The CRC Company will be paid a grant from the Commonwealth in instalments, upon the terms and conditions for CRCs established under the 2004 and 2006 Selection Rounds of the CRC Programme.

The terms and conditions are set out in the Agreements, entered into by the CRC Company and the Commonwealth, which commence on or after 1 July 2005 and 1 July 2007, respectively.

Key consequences of the Agreements are:

- the funding can only be applied to the conduct of the agreed 'Activities'

- the CRC Company must manage and govern the application of the funding towards the conduct of the Activities
- retention of the Commonwealth funding is conditional on the CRC Company meeting its obligations under the Agreement; and
- failure to apply the funding in the manner stipulated disentitles the CRC Company from retaining the funds, and can result in a requirement to repay them.

The CRC Company will carry on a business of managing and governing the conduct of the Activities of the research collaboration known as the CRC and will take a share of the results of those Activities.

## Reasons for Decision

Under subsection 6-5(2) of the ITAA 1997, assessable income includes ordinary income derived during the income year.

Therefore, an amount (including an amount which has been received), will not be included in assessable income for an income year, unless it has been derived during that year.

In *Brent v. Federal Commissioner of Taxation* (1971) 125 CLR 418; 71 ATC 4195; (1971) 2 ATR 563, the High Court said at CLR 420, ATC 4200, ATR 570:

It has become well established that unless the Act makes some specific provision on the point the amount of income derived is to be determined by the application of ordinary business and commercial principles and that the method of accounting to be adopted is that which 'is calculated to give a substantially correct reflex of the taxpayer's true income'. (*Commissioner of Taxes (South Australia) v Executor, Trustee and Agency Company of South Australia Limited (Carden's Case)* (1938) 63 CLR 108, at pp 152-154).

This reflects the view taken by the High Court in *Arthur Murray (NSW) Pty Ltd v. Federal Commissioner of Taxation* (1965) 114 CLR 314; 14 ATD 98; (1965) 9 AITR 673 (*Arthur Murray*).

In *Case U7 87 ATC 127; Tribunal Case 20* (1986) 18 ATR 3120 a company received, at the discretion of the grantor, an 'advance' of grant monies to which it would become entitled upon expenditure on the agreed research and development (R&D) activities. These monies were repayable if this expenditure was not made, or was less than the amount advanced. The AAT referred to the decision in *Arthur Murray* and considered that, in the relevant year, the company had not done all that was required of it to earn the full amount prepaid to it.

At paragraphs 23 and 24 of Taxation Ruling TR 2006/3, the Commissioner states that government payments made in advance of performance of the obligations in return for which agreement to make the payments has been given, in situations where legal restrictions attach to the use of those payments, and where repayment of the monies will occur, should the obligations not be performed, or the restrictions breached, do not constitute income derived at the time of receipt. It is only at the later time, when obligations begin to be performed, and restrictions or conditions lift, and the recipient has done all required of it in order to retain the monies received, that it can be said that it will have begun to derive the amounts in question as income.

Having regard to the authorities cited and to the key consequences of the Agreements, it is concluded that the instalments under the Agreements are not derived as income on receipt. Rather, the instalments are assessable income of the CRC Company derived under section 6-5 of the ITAA 1997 when, and only to the extent, in an income year, they are applied towards the conduct of the 'Activities'.

**Date of decision:** 28 April 2006

**Year of income:** Year ended 30 June 2006

Year ended 30 June 2007

Year ended 30 June 2008

**Legislative References:**

*Income Tax Assessment Act 1997*

section 6-5

subsection 6-5(2)

**Case References:***Brent v. Federal Commissioner of Taxation*

(1971) 125 CLR 418

(1971) 2 ATR 563

71 ATC 4195

*Arthur Murray (NSW) Pty Ltd v. Federal Commissioner of Taxation*

(1965) 114 CLR 314

14 ATD 98

(1965) 9 AITR 673

Case U7

87 ATC 127

*Tribunal Case 20*

(1986) 18 ATR 3120

**Related Public Rulings (including Determinations)**

Taxation Ruling TR 2006/3

**Related ATO Interpretative Decisions**

ATO ID 2004/193

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