



Class Ruling

Income tax: Education and Training Grant, and Computer Grant payments provided by the Australian Football League Players' Association

Contents	Para
LEGALLY BINDING SECTION:	
What this Ruling is about	1
Date of effect	8
Scheme	9
Ruling	32
NOT LEGALLY BINDING SECTION:	
Appendix 1:	
Explanation	38
Appendix 2:	
Detailed contents list	68

● **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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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 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 15-2 of the ITAA 1997.

All subsequent references in this Ruling are to the ITAA 1997, unless stated otherwise.

Class of entities

3. The class of entities to which this Ruling applies is current and former Australian Rules footballers who are in receipt of benefits under an Education and Training Grant, or Computer Grant from the Australian Football League Players' Association (AFLPA).

Qualifications

4. The Commissioner makes this Ruling 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 31 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

8. This Ruling applies from 1 July 2007 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

9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application from Dominion Private Clients dated 13 February 2008;
- AFLPA Education and Training Grant criteria and application form;
- AFLPA Computer Grant application form; and
- Rules of the Australian Football League Players' Association.

10. The AFLPA is an independent representative sporting body established to represent the interests of individuals who are eligible to be members, including current players in the Australian Football League (AFL).

11. The AFLPA performs the following functions:

- acts as the collective and representative voice of players in relation to issues that affect AFL players;
- works to achieve and maintain an appropriate level of fair minimum terms and conditions for all AFL players;
- provides ongoing professional support and counselling in a wide range of matters such as personal development, financial, legal, marital, grief, etc; and
- works with the AFL and AFL Clubs to enhance the game nationally and increase the gross revenue of the competition.

12. Individuals who are eligible to be members of the AFLPA currently include playing members, scholarship player members, past player members and life members.

13. No member is contracted to play in the AFL by the AFLPA and the members are not employees of the AFLPA. The only relationship that exists between the AFLPA and the individual player is that of association and member.

14. In fulfilment of the AFLPA's function and goals it has established the following grants:

- Education and Training Grant; and
- Computer Grant

to provide players with opportunities to enhance their education, training, personal development and welfare.

15. In total, the AFLPA awards up to 400 of these grants each year.

Education and Training Grants

16. Education and Training Grants are paid to assist recipients with the cost of undertaking approved vocational courses of education or training. Currently, the value of each grant ranges from up to \$500 (for a 'short course') to \$3,500 (for year 12 study).

17. An approved vocational course is one undertaken with a registered training organisation and/or an accredited educational institution. The course undertaken must be of a genuine vocational nature designed to assist a player to establish a career after football.

18. To be eligible to apply for the grant, an applicant must be either:

- a player who is currently on an AFL senior or rookie list;
- an AFLPA member and past senior player (eligible for three years after their last playing year); or
- an AFLPA member and past rookie player (eligible for one year after their last playing year).

19. Applications to receive the grant must be made annually. Where players are continuing a course, results from the previous year/term/semester must accompany their application.

20. Applicants requesting to undertake a number of short courses over the calendar year will have to provide evidence of how these courses are related to each other.

21. The recipients of the grants are determined at the absolute discretion of the AFLPA Education and Training Board.

22. Successful applicants have three options for the payment of the grant:

- direct payment to the course provider;
- reimbursement to the member; or
- reimbursement to a third party (for example, parents or AFL Club).

23. The grant is available for course fees and student fees. Text books, tuition and essential course materials will also be covered up to a maximum of \$500 per year. The payments are not made in relation to living expenses or items such as stationery, calculators, general equipment, parking permits, library fines or late fees.

24. Payments are made upon receiving a dated invoice or receipt for the claimed amount of an eligible educational expense from the course provider. Short course payments are made on evidence of satisfactory completion of the course and a dated receipt/invoice.

25. No payments are made after 31 December of the grant year. Any unused amount of the grant is forfeited and does not carry over to the next year.

26. The AFLPA has a budgeted amount allocated to the Education and Training grant each year. This amount is not provided by any sponsor – it is funded entirely by the AFLPA. If the amount is not fully allocated, additional allocations from the surplus may be made to successful applicants for that year where their original grant did not fully cover all of their educational costs.

27. Members who receive this grant are under no obligation to provide or perform any service, including making appearances for the AFLPA or any other party.

Computer Grant

28. The Computer Grant is a reimbursement for a computer purchased by the member for their personal use (maximum \$1,000 per member). The reimbursement is only for the cost of a basic computer and printer, and to be eligible the computer must have at least one year of parts and labour warranty attached.

29. The grant is only available to AFLPA members who are current senior listed players and it can only be received by a player once.

30. The grant is only payable on presentation of an official company/store receipt accompanied by a copy of the specifications of the computer.

31. The AFLPA has a budgeted amount allocated to the Computer Grant each year. This amount is not provided by any sponsor – it is funded entirely by the AFLPA – and members who receive the grant are under no obligation to provide or perform any service, including making appearances for the AFLPA or any other party.

Ruling

Education and Training Grants

Ordinary income

32. Amounts received under the AFLPA's Education and Training Grant program are not assessable as ordinary income for the purposes of section 6-5.

Statutory income – section 15-2

33. Amounts received under the AFLPA's Education and Training Grant program are not assessable as statutory income under section 15-2.

Capital gains tax

34. There are no CGT consequences when an eligible member receives amounts under the AFLPA's Education and Training Grant program.

Computer Grant

Ordinary income

35. Amounts received under the AFLPA's Computer Grant program are not assessable as ordinary income for the purposes of section 6-5.

Statutory income – section 15-2

36. Amounts received by players under the AFLPA's Computer Grant program are not assessable as statutory income under section 15-2.

Capital gains tax

37. There are no CGT consequences when an eligible member receives a Computer Grant from the AFLPA.

Commissioner of Taxation

12 October 2011

Appendix 1 – Explanation

1 *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.*

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

- income in the ordinary sense of the word (*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*).

Education and Training Grants

Ordinary income

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

40. The legislation does not provide specific guidance on the meaning of income according to ordinary concepts. However, a substantial body of case law exists which identifies likely characteristics.

41. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*, 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.¹

42. Amounts that are periodical, regular or recurrent, relied upon by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income,² as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.³ Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.⁴

¹ (1990) 170 CLR 124 at 138; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

² *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5 AITR 443.

³ *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 AITR 248; *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

⁴ *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; (1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 456 (per Fullagar J).

43. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁵ The whole of the circumstances must be considered⁶ and the motive of the payer may be relevant to this consideration.⁷

44. In *Scott v. Federal Commissioner of Taxation*,⁸ Windeyer J considered whether a gratuitous payment to the taxpayer's solicitor was income. His Honour held that, to be income, the gratuitous payment had to be in a relevant sense a product of the donee's income-producing activities.⁹ In *Federal Commissioner of Taxation v. Harris*,¹⁰ a bank made a lump-sum payment to supplement a former employee's pension so as to alleviate the negative effects of high inflation. The majority held that the payment was not a product of the former employment and this was an important element in finding that the payment was not income.

45. There is no employment or business relationship between the player and the AFLPA. A successful applicant is not required to enter into any contractual relationship with either the AFLPA or a sponsor to perform services of any kind in return for the payment of the grant monies.

46. The grant is for payments for course fees, student fees, tuition and essential course materials for courses accredited with registered educational institutions. It does not specifically contribute towards the member's living expenses. The grants are made by direct payment to the educational institution, reimbursement to the player or reimbursement to a third party.

47. The timing of a payment varies, depending on the expense claimed. Payments are only made upon receipt of a dated invoice or receipt and the grant period does not extend beyond one year unless further applications are made and approved.

48. The payments made under the grant may take the form of a lump sum as a predetermined expense.¹¹ The payments are not periodic payments, even if the expense should arise more than once. The payment is not expected or relied upon by the recipient to meet ordinary living expenses.

⁵ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 375; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73; (1956) 6 AITR 248 at 254; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375 at 402; 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

⁶ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627; (1953) 5 AITR 496; 24 ATR 527.

⁷ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

⁸ 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367

⁹ At 527.

¹⁰ (1980) 43 FLR 36; 80 ATC 4238; (1980) 10 ATR 869.

¹¹ *Federal Commissioner of Taxation v. Ranson* 89 ATC 5322 at 5327; (1989) 25 FCR 57 at 64 per Davies and Hill JJ

49. These factors, when considered together, lead to the conclusion that the grants are not ordinary income under subsection 6-5(1).

50. If paid directly to an educational institution on behalf of a recipient of the grant, the payment is not derived as income by the recipient of the grant under subsection 6-5(4), as the payment would not be ordinary income if received personally.

Statutory income – section 15-2

51. 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.

52. Section 10-5 lists provisions about statutory income and included in this list is section 15-2 (formerly paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936)).

53. Section 15-2 provides that the value of all allowances, gratuities, compensation, benefits, bonuses and premiums allowed, given or granted directly or indirectly in respect of employment or services rendered is included in assessable income.

54. A grant payment will be statutory income under section 15-2 if it is provided to the eligible player in respect of, or for or in relation directly or indirectly to, any employment or services rendered by the eligible player.

55. There is no employment relationship between the grant recipient and the AFLPA. Furthermore, the documents explaining the scheme establish that the recipients are not providing services to the AFLPA. The recipients are required to meet certain conditions in order to qualify for payment of the grant. These do not amount to the rendering of services to the AFLPA.

56. As such the payments are not assessable under section 15-2 because the players are not considered to be employees, nor are they rendering services to the AFLPA.

Capital gains tax

57. There are no CGT consequences as a result of an eligible member receiving an amount under the AFLPA's Education and Training Grant program.

Computer Grant

Ordinary income

58. The factors discussed in paragraphs 39 to 50 of this Ruling apply equally to whether a Computer Grant is assessable as ordinary income to a member.

59. The grant is a reimbursement (maximum \$1,000 per player) for a computer purchased by an AFLPA member who is a current senior listed player. The grant is only payable to the member on presentation of an official company/store receipt accompanied by the specifications of the computer.

60. The grant is a once-off payment as a member who is eligible can only receive the grant once. Therefore a Computer Grant payment under the grant is not recurrent, expected and relied upon in the sense required for it to be ordinary income.

61. There is no employment or business relationship between the player and the AFLPA. A successful applicant is not required to enter into any contractual relationship with either the AFLPA or a sponsor to perform services of any kind in return for the payment of the grant monies.

62. These factors, when considered together, lead to the conclusion that the grant is not income according to ordinary concepts.

Statutory income – section 15-2

63. The factors discussed in paragraphs 51 to 56 of this Ruling apply equally to whether a Computer Grant is assessable to a member under section 15-2.

64. A Computer Grant will be assessable under section 15-2 if it is provided to an eligible AFLPA member in respect of, or for or in relation, directly or indirectly, to any employment or services rendered by the AFLPA member.

65. There is no employment relationship between the eligible AFLPA member and the AFLPA. Furthermore, the documents explaining the scheme establish that the recipients are not providing services to the AFLPA. The recipients are required to meet certain conditions in order to qualify for a Computer Grant payment. These do not amount to the rendering of services to the AFLPA.

66. As such a Computer Grant payment is not assessable under section 15-2 because the players are not considered to be employees, nor are they rendering services to the AFLPA.

Capital gains tax

67. There are no CGT consequences as a result of the Computer Grant payment.

Appendix 2 – Detailed contents list

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

	Paragraph
What this Ruling is about	1
Relevant provisions	2
Class of entities	3
Qualifications	4
Date of effect	8
Scheme	9
Education and Training Grants	16
Computer Grant	28
Ruling	32
Education and Training Grants	32
<i>Ordinary income</i>	32
<i>Statutory income – section 15-2</i>	33
<i>Capital gains tax</i>	34
Computer Grant	35
<i>Ordinary income</i>	35
<i>Statutory income – section 15-2</i>	36
<i>Capital gains tax</i>	37
Appendix 1 – Explanation	38
Education and Training Grants	39
<i>Ordinary income</i>	39
<i>Statutory income – section 15-2</i>	51
<i>Capital gains tax</i>	57
Computer Grant	58
<i>Ordinary income</i>	58
<i>Statutory income – section 15-2</i>	63
<i>Capital gains tax</i>	67
Appendix 2 – Detailed contents list	68

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- capital gains tax
- education payments
- employment relationship
- ordinary income
- statutory income
- voluntary payments to sportspersons

Legislative references:

- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-5(4)
- ITAA 1997 6-10
- ITAA 1997 10-5
- ITAA 1997 15-2
- TAA 1953
- Copyright Act 1968

Case references:

- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation (1977) 34 FLR 375 at 402; 77 ATC 4255; (1977) 7 ATR 519

- Federal Commissioner of Taxation v Ranson 89 ATC 5322; (1989) 25 FCR 57
- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5AITR 443
- Federal Commissioner of Taxation v. Harris (1980) 42 FLR 36; 80 ATC 4238; (1980) 10 ATR 869
- Federal Commissioner of Taxation v. Rowe (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392
- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47; (1956) 11 ATD 68 (1956) 6 AITR 248
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367
- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570; (1953) 5 AITR 496; 24 ATR 527

ATO references

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