



CR 2003/63 - Income tax: assessable income: cricket umpires: Burnie Cricket League Inc. receipts

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 October 2002*



Class Ruling

Income tax: assessable income: cricket umpires: Burnie Cricket League Inc. receipts

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a 'public ruling' and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax law(s) dealt with in this Ruling are sections 6-5, 6-10 and 8-1 of the *Income Tax Assessment Act 1997* ('ITAA 1997') and paragraphs 26(e) and 26(eaa) of the *Income Tax Assessment Act 1936* ('ITAA 1936').

Class of persons

3. The class of persons to whom this Ruling applies is cricket umpires who receive payments for umpiring matches administered by the Burnie Cricket League (BCL) in the Burnie region of Tasmania.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 9 to 18 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled, and
- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 October 2002. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the Gazette;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

9. The arrangement that is the subject of the Ruling is described below.

10. The BCL administers cricket matches in the Burnie region, which includes the areas of Riana, Penguin, Myalla and Wynyard, in the State of Tasmania. The BCL pays umpires both a match fee and travel allowance for each match they umpire. Umpires are paid monthly by cheque by the Treasurer of the BCL. Umpires officiate in three different grades, that is, A, B and C grades.

11. Current match fees are such that the most an umpire can receive is \$1,680 in a season. This is based on 18 roster games and 3

finals. The maximum an umpire would receive for one competition match would be \$80 if they have completed an umpires course and \$60 per game if they haven't.

12. In addition to the match fee, each umpire is paid a 'travel allowance' of \$10 per match. The allowance is paid to umpires who have to travel to Riana which is 19 kilometres east of Burnie or to Wynyard and Myalla which are 17 and 29 kilometres to the west of Burnie unless the umpires come from that area. Umpires must arrange their own travel to games usually in their own vehicles.

13. Umpires do not receive any allowances and benefits other than their match fee and the 'travel allowance' (refer paragraphs 11 and 12).

14. Umpires are not required to complete a registration form.

15. Umpiring appointments are made solely on the basis of merit, such that the best available umpires are appointed to the most important games with A grade filled first, then B grade, then C grade.

16. Umpires are required to incur expenditure upon their own black pants, shoes and a jumper or jacket. Shirts are provided by a cricket league sponsor.

17. Other costs the umpires must meet would include travel to the ground, cleaning of the entire uniform, sun protection (glasses, lotion, hat) stationary (notebooks, pens), attendance at tribunal hearings, umpire course and any other meeting required of them.

18. The match fees are not intended to, nor do they usually, cover expenses. The purpose of the payment is to encourage members of the community to participate in local sporting activities by subsidising that participation.

Ruling

19. The match fees and the car allowance received by cricket umpires who umpire matches administered by the BCL in the Burnie region of Tasmania are not assessable income.

20. Losses and outgoings incurred deriving the match fees and car allowance cannot be claimed as a deduction.

Explanation

21. A payment or other benefit received by a taxpayer is 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*).

Ordinary Income

22. Under subsection 6-5(1) of the ITAA 1997 an amount is assessable income if it is income according to ordinary concepts (ordinary income).

23. 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.

24. 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 quality or character of the payment in the hands of the recipient;
- the form of the receipt, 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.

25. Furthermore, where a taxpayer's activities constitute a pastime or hobby rather than an income-producing activity, money and other benefits received from the pursuit of that pastime or hobby are not assessable income, nor are the expenses allowable deductions.

26. Participation in activities generating pastime or hobby receipts is a social or personal pursuit of a non-commercial nature. Pastime receipts are not intended to, nor do they usually, cover expenses. Even regular receipts obtained from a pastime or hobby are still characterised as receipts from a pastime or hobby and accordingly are

not assessable income. A receipt that is an incident of a pastime or hobby would also not be assessable, even if it arises from the provision of a service. However, the nature of such a receipt or receipts is relevant in determining whether the pastime has become a business. The receipt or receipts could indicate, for example: a commercial activity; an intention to make a profit from the activity; or an increase in either the size and scale of the activity or the degree of repetition or regularity of the activity.

Match fees

27. The sporting activities of BCL umpires are considered to constitute a pastime or hobby and therefore, the match fees received from the pursuit of that pastime or hobby are not assessable income.

28. The match fees are not intended to, nor do they usually, cover expenses. The purpose of the payment is to encourage members of the community to participate in local sporting activities by subsidising that participation.

29. In forming the opinion that the BCL umpires who comprise the class of persons to whom this Ruling applies are engaged in a pastime or hobby, we have taken into account the number of games that they officiate, the seniority of the cricket leagues, the links with the community of that league, particularly the social benefits of participation and the quantum of the fees that they can receive.

Travel allowance

30. In addition, the 'travel allowance' does not constitute 'ordinary income' as it is considered a partial reimbursement of an umpire's expenditure on a private or personal pursuit.

Provisions relating to statutory income

31. Section 6-10 of the ITAA 1997 includes in assessable income amounts that are not ordinary income; these amounts are statutory income.

32. The relevant two provisions of the ITAA 1936 are:

- paragraph 26(e), which provides that the assessable income shall include '*. . . the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in relation directly or indirectly to, any employment of or services rendered . . .*'; and

- paragraph 26(eaa), which provides that the assessable income shall include ‘ . . . a benefit that, but for section 22 of the Fringe Benefits Tax Assessment Act 1986, would be an expense payment fringe benefit within the meaning of that Act – the amount of the reimbursement referred to in that section . . . ’.

Match fees

33. The main issue to consider with respect to paragraph 26(e) is whether the payment is ‘*given or granted to him in respect of any employment of or services rendered . . .*’. Whilst the BCL umpires are not considered ‘employees’, paragraph 26(e) also includes in assessable income those allowances etc, which are paid in respect of ‘services rendered’.

34. The match fees of BCL umpires are considered to be ‘receipts incidental to a pastime’ (refer paragraphs 24 to 29). As such, the match fees are not assessable under paragraph 26(e) because the umpires are not considered to be employees, nor are they ‘rendering services’.

Travel allowance

35. Both paragraphs 26(e) and 26(eaa) include certain allowances, benefits and reimbursements in assessable income, where those allowances or reimbursements are given or granted in relation, directly or indirectly to any employment or services rendered.

36. Paragraph 26(eaa) specifically includes car expense reimbursements that would be expense payment fringe benefits under the *Fringe Benefits Tax Assessment Act 1986* (‘FBTAA 1986’) but for the exemption contained in section 22 of that Act. The ‘allowance’ received by BCL umpires does not constitute an ‘expense payment benefit’ under section 20 of the FBTAA 1986 as there is no employer/employee relationship, the prerequisite that characterises a fringe benefit.

37. The main issue to consider with respect to paragraph 26(e) is whether the payment is ‘*given or granted to him in respect of any employment of or services rendered . . .*’. Whilst the BCL umpires are not considered ‘employees’, paragraph 26(e) also includes in assessable income those allowances etc, which are paid in respect of ‘services rendered’.

38. Given the match fees of BCL umpires are considered to be ‘receipts incidental to a pastime’ (refer paragraph 34), the related ‘travel allowance’ is not assessable under paragraph 26(e) because the

umpires are not considered to be employees, nor are they ‘rendering services’.

General Deductions

39. As the match fees and travel allowance received by the umpires are not assessable income, all losses and outgoings that are incurred in respect of deriving those amounts are not allowed as a deduction under section 8-1 or any other provision of the ITAA 1997.

Umpires who officiate in other leagues

40. Where umpires also officiate in cricket leagues or matches other than those administered by the BCL, those umpires’ activities may have ceased to be that of a hobby or pastime. A more detailed analysis of the circumstances of those umpires may be required. Umpires in this situation should discuss their circumstances with their taxation adviser or the Australian Taxation Office.

Pay As You Go (PAYG) withholding

41. As ruled above, match payments paid to an umpire who is engaged in a hobby or pastime are not assessable income. The payments are not a payment for work and services and therefore the PAYG withholding provisions of Subdivision 12-B of Schedule 1 of the *Taxation Administrative Act 1953* do not apply. Tax should not be withheld from the match payment of umpires who are in the class of persons to whom this Ruling applies.

Detailed contents list

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Commissioner of Taxation

6 August 2003

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| | - sporting organisations |
| | - sport |
| <i>Previous Ruling:</i> | |
| Not previously released in draft form | <i>Legislative references:</i> |
| | - FBTA 1986 20 |
| | - FBTA 1986 22 |
| <i>Related Rulings/Determinations:</i> | - ITAA 1936 26(e) |
| TR 92/1; TR 92/20, TR 97/16; | - ITAA 1936 26(eaa) |
| CR 2001/1 | - ITAA 1997 6-5 |
| | - ITAA 1997 6-5 (1) |
| <i>Subject references:</i> | - ITAA 1997 6-10 |
| - allowances | - ITAA 1997 8-1 |
| - assessable income | - TAA 1953 Part IVAAA |
| - hobby v. business | - TAA 1953 12-B of Sch 1 |
| - sports people | - Copyright Act 1968 |
| - travel allowances | |
| - motor vehicle allowances | |

ATO References

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