

CR 2003/73 - Income Tax: assessable income: cricket scorers: Melbourne Cricket Club 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 July 2003*



Class Ruling

Income tax: assessable income: cricket scorers: Melbourne Cricket Club 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 Scorers for the Melbourne Cricket Club (MCC) who receive payments as Scorers of their 1st, 2nd, 3rd and 4th eleven district cricket teams.

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 17 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- (b) this Ruling may be withdrawn or modified.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 July 2003. 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 MCC has a number of teams that compete in district cricket matches within the Victorian Cricket Association. The MCC intends to pay an honorarium to the Scorers of their 1st, 2nd, 3rd and 4th eleven district cricket teams for each match. Scorers are paid through the MCC Foundations accounts payable system.

11. Scorers will receive \$40 per day for each match at which they officiate. The amount paid will be the same for Scorers in each grade notwithstanding that the 1st and 2nd eleven games have a longer minimum duration than the 3rd and 4th eleven games. Cricket is played on, up to, 34 days during the season if a team makes it to the Grand Final. Therefore a maximum of \$1,360 could be paid during the year to an individual Scorer.

12. Scorers will not receive any allowances and benefits other than their Scorer's fee (refer paragraph 11).

13. Scorers are not registered with the MCC as such. The MCC however maintains contact details such as name, address, phone number and email address.

14. A Scorer's duties are not defined but the following activities are expected to be performed:

- Scoring on Saturdays and/or Sundays and/or public holidays during the cricket season;
- Providing team lists for captains;
- Lodging results with the Victorian Cricket Association;
- Compiling statistics for the coaching staff;
- Ensuring all paperwork is completed correctly; and
- Providing support for the captain of the team.

15. Occasionally, they will also be required to set up scoring tables, assist with morning teas and drinks, check on availability of players and take injured players to hospital.

16. Scorers are required to travel to various grounds to score. These grounds can be as far away as Geelong and Frankston. Other costs the Scorers must meet include stationary (notebooks, pens) and travel to various meetings. They are also required to communicate scores by email on occasions and would use their personal computers for this purpose. The Scorers are generally provided with the necessary equipment to carry out their duties.

17. The Scorer's fees are not intended to, nor will they usually, cover expenses. The amount to be paid to the Scorers is merely a token, particularly having regard to the considerable time and commitment involved in carrying out their duties. The Scorers provide their services to stay involved and assist in the game of cricket. The purpose of the payment is to encourage members of the community to participate in the game of cricket by subsidising that participation.

Ruling

18. The fees received by Scorers of the MCC are not assessable income.

19. Losses and outgoings incurred deriving the Scorers fees cannot be claimed as a deduction.

Explanation

20. 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

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

22. 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.

23. 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.

24. 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 is not assessable income, nor are the expenses allowable deductions.

25. 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.

Scorers fees

26. The sporting activities of MCC Scorers 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.

27. 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.

28. In forming the opinion that the MCC Scorers 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 grade, the links with the community of that sport, particularly the social benefits of participation and the quantum of the fees that they can receive.

Provisions relating to statutory income

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

30. 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 . . .*’;
- 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

31. 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 Scorers are not considered ‘employees’, paragraph 26(e) also includes in assessable income those allowances etc, which are paid in respect of ‘services rendered’.

32. The Scorers fees are considered to be ‘receipts incidental to a pastime’ (refer paragraphs 26 to 28). As such, the fees are not assessable under paragraph 26(e) because the Scorers are not considered to be employees, nor are they ‘rendering services’.

General Deductions

33. As the fees received by the Scorers 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.

Scorers who officiate in other games

34. Where Scorers for the MCC also officiate in games other than those described in paragraph 10, those Scorer’s activities may have ceased to be that of a hobby or pastime. A more detailed analysis of the circumstances of those Scorers may be required. Scorers in this situation should discuss their circumstances with their taxation adviser or the Australian Taxation Office.

Pay As You Go (PAYG) withholding

35. As ruled above, payments paid to a Scorer 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 payment of Scorers who are in the class of persons to whom this Ruling applies.

Detailed contents list

36. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

27 August 2003

Previous Ruling:

Not previously released in draft form

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 97/16;
CR 2001/1

Subject references:

- allowances
 - assessable income
 - hobby v. business
 - sports people
 - sporting organisations
 - sport
- TAA 1953 12-B
 - ITAA 1936 26(e)
 - ITAA 1936 26(eaa)
 - ITAA 1997 6-5
 - ITAA 1997 6-5 (1)
 - ITAA 1997 6-10
 - ITAA 1997 8-1
 - Copyright Act 1968

Legislative references:

- TAA 1953 Part IVAAA

ATO references

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