

# ***CR 2004/39 - Income tax: assessable income: football umpires: Riverina Australian Football Umpires Association Inc. receipts***

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! This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

! This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*



## Class Ruling

### Income tax: assessable income: football umpires: Riverina Australian Football Umpires Association Inc. receipts

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#### **Preamble**

*The number, subject heading, **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

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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 laws applied 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) and sections 20 and 22 of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA 1986).

#### **Class of persons**

3. The class of persons to whom this Ruling applies are Australian Rules football umpires who are members of the Riverina Australian Football Umpires Association Inc. (RUA) who receive payments for umpiring matches in any of the following New South Wales Football Leagues:

- The Riverina Football League;
- The Farrer Football League;
- The Wagga and District Junior Australian Football Association; and
- Other Wagga Wagga / Riverina Australian Football competitions.

## 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 actually carried out is carried out in accordance with the arrangement described in paragraphs 9 to 24.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:
  - 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
  - this Ruling may be withdrawn or modified.
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## Date of effect

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8. This Ruling applies to years commencing both before and after the date of issue. 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

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9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- application for Class Ruling dated 19 December 2003;
- letter dated 20 February 2004; and
- Tax Office records of telephone conversations between a representative of the applicant and a taxation officer.

10. Members of the RUA provide their services to the following NSW Australian Football Associations:

- The Riverina Football League;
- The Farrer Football League;
- The Wagga and District Junior Australian Football Association; and
- Other Wagga Wagga/Riverina Australian Football competitions.

11. The completion of a RUA registration form is the only condition precedent to individual membership of the RUA. The registration form records the member's name and address etc.

12. Individual umpire performance is evaluated on a regular basis by the Senior Coach, the Boundary and Goal Umpire Coaches and several umpire observers. Appointment of umpires to specific football matches is the responsibility of the Appointment Board, of which the Senior Coach, the Director of Umpiring and other coaching staff are members. The RUA and representatives from the NSW-AFL and leagues/association for which the RUA provide umpires, are responsible for the selection of the Senior Coach and Director of Umpiring. The Senior Coach then appoints the other coaching staff and the Director of Umpiring appoints the observer panel. The Director of Umpiring acts as the Chairman of the Appointments Board.

13. Umpiring appointments are made solely on the basis of merit, such that the best available umpires are appointed to the most important games.

14. There is a verbal agreement with the football associations that they will use RUA to provide umpires at their matches. The RUA (acting on behalf of its members) and the football leagues/associations negotiate annually to determine the quantum of the match fee paid to the RUA for the provision of RUA umpires to that match for each grade of match. The RUA charges the association's only one fee per match. From this fee, the RUA pays the umpires for their services and uses any excess monies for additional expenses.

15. The RUA acts as the billing agent for its members for the purpose of invoicing the football leagues/associations to which members provide their services.

16. Invoices are sent separately to the football leagues/associations for a match fee for which the RUA appoints umpires. This match fee consists of the RUA member's match fees, travel allowances, contribution to the cost of umpire insurance and contribution to the running costs of the RUA.

17. The money collected from the football leagues/associations is distributed to individual umpires by the RUA.

18. RUA members are paid a match fee for each match they umpire. The amounts paid vary from league to league, is dependent on what grade is umpired and whether the umpire is a field, goal or boundary umpire. The maximum an umpire would receive for a standard rostered match would be \$105. Current match fees are such that umpires receive between \$50 and \$3,400 in a season.

19. Members are paid monthly by Electronic Funds Transfer into a nominated bank account.

20. In addition, a 'travel allowance' is paid to the designated driver of one 'official car' per game when members officiate at those matches outside of the umpire's home town. This is currently paid at the rate of 33 cents per kilometre. Individual members have the choice of travelling via the nominated vehicle or finding their own transport. Only the driver of the nominated vehicle is paid the travel allowance. In the majority of cases, only the nominated vehicle is used.

21. Members do not receive any allowances and benefits other than their match fee and the 'travel allowance'.

22. Match payments are not intended to, nor do they usually cover expenses. The purpose of payments is to encourage members of the community to participate in local sporting activities by subsidising their participation. Individual umpires contend that their primary motivation for their involvement in umpiring is:

'the love of Australian Rules Football and that it allows contribution to the communities in which the games are played. Umpiring also provides an opportunity to achieve a high level of fitness and that it provides an opportunity to be involved socially with other members.'

23. Members of the RUA are required to incur expenditure on their umpiring uniform, umpiring shoes, whistles, wrist bands, training gear and other related umpiring equipment. Members who are in their 1<sup>st</sup> year of umpiring of Australian Rules Football are provided one set of umpiring uniform only at no expense to the member. This is a cost to the RUA to encourage new people to umpiring.

24. If an umpire advises, at short notice, that they are unavailable, the Director of Umpiring liaises with the relevant coach with a view to find a suitable replacement.

## Ruling

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25. The match fees and the car allowance received by members of the Riverina Australian Football Umpires Association Inc (RUA) are not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

26. Losses and outgoings, incurred in deriving the match payments and car allowance, cannot be claimed as a deduction under section 8-1 of the ITAA 1997 or any other provision for the ITAA 1997.

## Explanation

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27. A payment or other benefit received by an umpire is assessable income if it is:

- income in the ordinary sense of the word (*ordinary income*); or
- an amount of benefit that through the operation of the provisions of the tax law is included in assessable income (*statutory income*).

### Ordinary Income

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

29. 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.

30. 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.

31. Furthermore, where a person'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.

32. 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***

33. The sporting activities of RUA members 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.

34. Their participation in umpiring activities is a social or personal pursuit of a non-commercial nature. Individual RUA members have stated their primary motivation for umpiring is their love of Australian Rules (football) and a desire to contribute to the communities in which the game is played. In addition, participation also provides the opportunity to maintain fitness and be involved socially with other members.

35. 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.

36. In forming the opinion that the RUA members 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 football leagues, the links with the community of those leagues, particularly the social benefits of participation and the quantum of the fees that they can receive.

### ***Travel allowance***

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

### **Provisions relating to statutory income**

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

39. The relevant two provisions are:

- paragraph 26(e) of the ITAA 1936, 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) of the ITAA 1936, which provides that the assessable income shall include '... a benefit that, but for section 22 of the FBTAA 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***

40. The main issue to consider with respect to paragraph 26(e) of the ITAA 1936 is whether the payment is '*given or granted to him in respect of ... any employment of or services rendered ...*'. Whilst the RUA members are not considered 'employees', paragraph 26(e) of the ITAA 1936 also includes in assessable income those allowances etc, which are paid in respect of 'services rendered'.



41. The match fees paid to RUA members are considered to be 'receipts incidental to a pastime' (refer paragraphs 33 to 36). As such, the match fees are not assessable under paragraph 26(e) of the ITAA 1936 because the umpires are not considered to be employees, nor are they 'rendering services'.

### **Car allowance**

42. A 'travel allowance' is paid to the owner of one 'official car' per game, when members officiate at those matches outside of the umpire's home town. The 'allowance' is currently paid at the rate of 33 cents per kilometre.

43. Both paragraphs 26(e) and 26(eaa) of the ITAA 1936 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.

44. Paragraph 26(eaa) of the ITAA 1936 specifically includes car expense reimbursements that would be an expense payment fringe benefit under the FBTAA 1986, but for the exemption contained in section 22 of that Act. The 'allowance' received by RUA members 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.

45. The main issue to consider with respect to paragraph 26(e) of the ITAA 1936 is whether the payment is '*given or granted to him in respect of ... any employment of or services rendered ...*'. Whilst the RUA members are not considered 'employees', paragraph 26(e) of the ITAA 1936 also includes in assessable income those allowances etc, which are paid in respect of 'services rendered'.

46. Given the match fees of RUA members are considered to be 'receipts incidental to a pastime' (refer paragraphs 33 to 36), the related 'travel allowance' is not assessable under paragraph 26(e) of the ITAA 1936 because the umpires are not considered to be employees, nor are they 'rendering services'.

### **General Deductions**

47. As the match fees and car 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**

48. Where an umpire who officiates in leagues covered by this Ruling, also officiates in more senior leagues than those administered by the RUA, that umpire's 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**

49. 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**

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

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## Detailed contents list

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### Commissioner of Taxation

21 April 2004

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*Previous Ruling:*

- sport

Not previously released in draft form

*Legislative references:*

*Related Rulings/Determinations:*

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

- FBTA 1986 20
- FBTA 1986 22
- 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
- TAA 1953 Part IVAAA
- TAA 1953 12-B of Sch 1
- Copyright Act 1968

*Subject references:*

- allowances
- assessable income
- hobby v. business
- sports people
- travel allowances
- motor vehicle allowances
- sporting organisations

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ATO references

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