



CR 2004/69 - Income tax: assessable income: football umpires: leagues and associations affiliated with the West Australian Football Commission Inc. receipts

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Class Ruling

Income tax: assessable income: football umpires: leagues and associations affiliated with the West Australian Football Commission 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

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 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 which this Ruling applies is football umpires (field, boundary and goal umpires) who are registered with the leagues and associations affiliated with the West Australian Football Commission (the 'WAFC') and officiate in and receive payments for umpiring matches in any of the grades of football, including underage competitions, colts competitions, senior competitions and junior and senior inter association competitions conducted by those leagues and associations.

4. Umpires who also officiate in the West Australian Football League (WAFL) competition and the Australian Football League competition (the National competition) are not included in the class of persons to which this Ruling applies.

5. Should further leagues and associations junior to the WAFL competition become affiliated with the WAFC, subject to the qualifications in paragraphs 6 to 8, this Ruling will also apply to registered umpires of those leagues and associations officiating in their matches.

Qualifications

6. The Commissioner makes this ruling based on the precise arrangement identified in this ruling.

7. 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 11 to 25.

8. 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

10. This Ruling applies from 1 July 2003. However, this 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

11. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents which are attached to the file record maintained by the Australian Tax Office for this ruling. 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 March 2004;
- facsimile transmission from the applicant dated 1 June 2004; and
- Tax office record of telephone conversation between a representative of the applicant and a taxation officer.

12. The WAFL is the elite football competition based in the State of Western Australia and the WAFC is the peak administrator of Australian football matches played in the WAFL.

13. The controlling body for each league and association affiliated with the WAFC engages and appoints their own field, boundary and goal umpires (panel umpires) to officiate at games played in their respective competitions. The majority of the games administered by the affiliated leagues and associations are controlled by these panel umpires. In some competitions the respective leagues or associations provide field umpires only for rostered fixtures with the boundary and goal umpires provided directly by the competing clubs.

14. Umpires receive payments for officiating in the matches outlined in paragraph 3 either directly from the competing clubs or through the respective leagues and associations.

15. Umpires are paid a fee for each match in which they officiate. The amount varies from competition to competition and, in individual cases, may also vary according to factors such as the accreditation level of the umpire, the age group of the players and whether the match is an intra or inter association fixture. Inter association matches involve representative teams from respective associations and umpires could expect to officiate and receive a match fee in only one of these matches per season.

16. Umpires of junior matches are paid between \$29 and \$57 per match with a 50% loading for a field umpire where only one field umpire is appointed to a game. Umpires of senior matches are paid between \$20 and \$120 per match. An umpire officiating in a finals match or inter association match would receive a slightly higher amount.

17. Including finals and inter association games, field umpires and boundary umpires in senior competitions may officiate in up to a maximum of 20 matches per season while goal umpires in senior competitions may officiate in up to 40 matches per season often officiating in 2 games (league and reserves) per day. Umpires of junior games, due to the number of games played, may officiate in more than one game per week although it is envisaged that no junior umpire would officiate in more than 26 games per season. Current fees are such that most umpires would receive less than \$1,500 in a season and no umpire would receive more than \$3,500.

18. Umpires are generally paid in cash following the matches although in some leagues and associations payment is made by the controlling body within 2 weeks after the match.

19. In addition to the match fee, umpires of senior games are paid a 'travel allowance'. The allowance is only paid when an umpire is required to travel more than 100 kilometres (kms) to and from a game and then only to cover the distance travelled over 100 kms. Where a number of umpires are travelling together the allowance is paid only to the driver.

20. Generally the travel allowance is paid on a cents per km basis although in some instances a pre-determined fixed sum is paid. The allowance paid to umpires is paid at a rate to cover or contribute toward the cost of travel when an umpire is required to travel the longer distances. Currently the maximum rate paid is 45 cents per km. The fixed sums do not equate to more than 45 cents per km.

21. Umpires do not receive any allowances or benefits other than their match fees and travel allowance.

22. All umpires are registered with their respective leagues with all personnel details submitted. Some leagues have umpires under the age of 18 years registered and officiating in various roles depending on the level of the games.

23. Umpires appointments are made by umpiring coaches or coordinators and solely on the basis of merit such that the best available umpires are appointed to the most important games. Individual umpire performance is reviewed or evaluated by coaching staff on a regular basis with feedback provided.

24. Umpires are required to incur expenditure upon their own uniforms (game shirts, shorts, white running shoes or football boots), training gear, track suits, whistles, wrist bands, trousers (for goal umpires), accreditation fees and other equipment (liniment, bandages etc.).

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

Ruling

26. The match fees and travel allowance paid to umpires who are registered with the leagues and associations affiliated with the West Australian Football Commission and officiate in football matches administered by those leagues and associations are not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

27. Losses and outgoings incurred deriving the match fees and travel allowance cannot be claimed as a deduction under section 8-1 of the ITAA 1997 or any other provision.

Explanation

28. 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

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

30. 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.

31. 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.

32. 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.

33. 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 either in the size and scale of the activity or the degree of repetition or regularity of the activity.

Match Fees

34. The sporting activities of the 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.

35. These 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 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 at which 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 and payments they can receive.

Travel allowance

37. In addition, the 'travel allowance' does not constitute 'ordinary income' as it is considered a reimbursement of an umpire's expenditure in regard to 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. Section 10-5 of the ITAA 1997 provides a summary list of these statutory income provisions.

39. The relevant two provisions for the purpose of this class ruling 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 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

40. 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 umpires 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 of the umpires are considered to be 'receipts incidental to a pastime' (refer paragraphs 33 to 35). 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

42. 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.

43. Paragraph 26(eaa) of the ITAA 1936 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 the 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.

44. 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 umpires are not considered 'employees', paragraph 26(e) also includes in assessable income those allowances etc, which are paid in respect of 'services rendered'.

45. Given the match fees of umpires are considered to be 'receipts incidental to a pastime' (refer paragraph 33 to 35), 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

46. 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 more than one competition

47. Where umpires officiate in more than one competition, 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

48. As explained above, match payments made to an umpire who is engaged in a hobby or pastime are not assessable income. The payments are not regarded as withholding payments under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*. An entity making match payments to umpires who are in the class of persons to which this Ruling applies will not be required to withhold amounts from these payments.

Detailed contents list

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Commissioner of Taxation

7 July 2004

CR 2004/69

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

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

Subject references:

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

Legislative references:

- 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
- TAA 1953 Pt IVAAA
- TAA 1953 Sch 1 Div 12
- FBTAA 1986 20
- FBTAA 1986 22

ATO references

NO: 2004/8858

ISSN: 1445-2014