

# ***CR 2004/93 - Income tax: assessable income: sport officials: Town of Gawler***

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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: sport officials: Town of Gawler

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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 IVA 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 paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936).

### **Class of persons**

3. The class of persons to which this Ruling applies is umpires of social and recreational sports at the Community Recreation Centre administered by the Town of Gawler in South Australia.

### **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 16.

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- this Ruling may be withdrawn or modified.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 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

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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 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 22 March 2004.

- Tax Office record of telephone conversations between a representative of the applicant and a taxation officer.
10. The Town of Gawler administers a Community Recreational Centre as part of its core responsibilities to its community members.
11. Social and recreational activities take place on a weekly basis. This recreational centre provides facilities for community members to play different types of sports, including Little League, Netball, Basketball, Youth Roller Skating and Hockey, as well as facilities for Vacation Care.
12. The officiating of these games is performed by local people of differing ages. Often a person will officiate once a week for a period of time and then miss out for some time as their services are not required or they are not available. Each official will only officiate for two hours per week maximum.
13. The Town of Gawler provides the official with a match fee, usually of \$20 per game.
14. The Town of Gawler does not require that the officials be qualified in the sport they are supervising. Some sports offer training and development for the officials of community level games. Depending on the rules of the relevant sporting associations and the motivation of the individual officials, some officials will undertake training and development and attain qualifications that provide evidence of knowledge of the rules of the sport and the skill to officiate at community level games.
15. The Town of Gawler does not pay for the officials to become qualified in the sport they are umpiring.
16. The fees paid by the Town of Gawler 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 the costs associated with participation. Officiating provides the opportunity to be involved in the game, achieve a greater fitness level and to meet friends on a regular basis. Officials who officiate at the Community Recreational Centre are making it possible for residents of the Town of Gawler to take part in community sport.

## **Ruling**

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17. The match fees paid to the officials who officiate at social and recreational sports at the Community Recreational Centre are not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.
18. Losses and outgoings incurred deriving the match fees cannot be claimed as a deduction under section 8-1 of the ITAA 1997.

## Explanation

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19. 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

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

21. 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.

22. 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.

23. 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.

24. 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 or scale of the activity or the degree of repetition or regularity of the activity.

25. The umpiring activities of those community members who officiate matches conducted at the Community Recreation Centre are considered to constitute a pastime or hobby. Therefore, the match fees received from the pursuit of that pastime or hobby are not assessable income.

26. 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.

27. In forming the opinion that the officials 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 links with the community of those sports, particularly the social benefits of participation and the quantum of the fees that they can receive.

### **Statutory income**

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

29. Paragraph 26(e) of the ITAA 1936 may have application to the circumstances here. This provision 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 . . .

30. 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) of the ITAA 1936 also includes in assessable income those allowances etc. which are paid in respect of 'services rendered'.

31. The match fees of the officials are considered to be 'receipts incidental to a pastime' (refer paragraph 25). As such, the match fees are not assessable under paragraph 26(e) of the ITAA 1936 because the officials are not considered to be employees, nor are they 'rendering services'.

### **General deductions**

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

### **Officials who officiate in other games**

33. Where officials who officiate in matches other than those described in paragraphs 11 to 13, those officials' 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. Officials in this situation should discuss their circumstances with their taxation adviser or the Tax Office.

### **Pay As You Go (PAYG) withholding**

34. As explained above, match payments made to an official 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 officials 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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35. Below is a detailed contents list for this Class Ruling:

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**Commissioner of Taxation**1 September 2004

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*CR 2001/1; TR 92/1; TR 92/20;  
TR 97/16*Legislative references:*

- Copyright Act 1968
  - ITAA 1936 26(e)
  - ITAA 1997 6-5
  - ITAA 1997 6-5(1)
  - ITAA 1997 6-10
  - ITAA 1997 8-1
  - TAA 1953 Pt IVAAA
  - TAA 1953 Sch 1Div 12
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## ATO references

NO: 2004/12343

ISSN: 1445-2014