

CR 2006/26 - Income tax: assessable income: football umpires: East Gippsland Umpires Association Incorporated receipts



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Class Ruling

Income tax: assessable income: football umpires: East Gippsland Umpires Association Incorporated receipts

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ⓘ This Ruling provides you with the following level of protection:

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant taxation provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant taxation provision(s)

2. The relevant taxation provisions 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 entities

3. The class of entities to which this Ruling applies is Australian Rules Football umpires who receive payments for umpiring matches for the East Gippsland Umpires Association Inc. (EGUA) in eastern Victoria. In this Ruling these entities are referred to as 'umpires'.

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 24 of this Ruling.

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

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 January 2006. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant taxation provisions are not amended.

9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

12. The scheme that is the subject of the Ruling is described below. This description is based on the following documents and telephone records which are attached to the file record maintained by the 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 part of documents incorporated into this description of the scheme are:

- Application for Class Ruling dated 21 February 2006;
- Information provided in a telephone conversation with the Secretary of AGUA on 8 March 2006; and
- Information provided in a telephone conversation with the Secretary of AGUA on 16 March 2006.

13. EGUA administers Australian Rules Football matches in eastern Victoria. It is responsible for the payment of match fees to umpires who umpire matches in the following leagues:

- East Gippsland Football and Netball League;
- Omeo Football League; and
- Bairnsdale Junior League.

14. The only requirement for an umpire to obtain membership of the EGUA is to complete an application form. A small administration fee is charged to cover accreditation costs.

15. Umpires are paid a match fee for each match they umpire and amounts received in a season depends on the level and number of games at which an umpire officiates. Current fees are such that the expected upper limit of amounts they would receive in a season is between \$2,000 and \$2,500. The vast majority of the umpires would receive less than \$700. The individual match fee currently paid to a senior umpire in a senior league is \$78. All match fees paid to other umpires, including Boundary umpires and Goal umpires in lesser competitions are less than that amount.

16. In addition to a match fee, some umpires may receive a travel allowance at the rate of 50 cents per kilometre. The travel allowance is only paid for travel to match venues away from Bairnsdale. The allowance is only paid to the umpire providing the transport not those umpires who travel as passengers.

17. EGUA normally pays umpires on a monthly basis by direct credit to their nominated financial institution.

18. Umpires do not receive any allowances and benefits other than their match fee and travel allowance.

19. In all cases, umpires are appointed to matches by the EGUA and no Club or League has any influence over which umpires are appointed to which games.

20. All appointments are on merit whereby the most experienced and capable umpires are appointed to the more senior or important matches. Umpires appointed to matches are assessed for their ability and further appointments are governed by their capabilities.

21. Although avoided where possible, umpires may officiate at more than one match per week however it is highly unlikely that an umpire would officiate at more than 30 matches in a season.

22. Umpires are required to incur expenditure for match uniforms and training gear including shoes, whistles, wristbands, sock, shorts and shirts. Goal umpires incur expenditure on trousers, coats, ties hats, caps, flags and flagsticks.

23. Umpires are also required to incur expenditure on shirts, trousers, shoes, jumpers and ties being the required dress code for umpires to attend matches and other official events.

24. The match fees are not intended to, nor do they usually cover expenses incurred by the umpires. The purpose of the payment is to encourage members of the community to participate in local sporting activities by subsidising the costs associated with participation. Individual umpires contend that the primary motivation for umpiring is a love of Australian Rules Football and a desire to contribute to the community in which the game is played. Umpiring also provides the opportunity to be involved in the game, achieve a greater fitness level and to meet friends on a regular basis.

Ruling

25. The match fees and travel allowance paid to umpires who officiate at matches for the EGUA in eastern Victoria are not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

26. Losses and outgoings incurred by umpires in connection with their umpiring activities cannot be claimed as a deduction under section 8-1 of the ITAA 1997 or any other provision of the ITAA 1997.

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

27. 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

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 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.

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 umpires appointed to umpire EGUA matches 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. 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 the costs associated with that participation.

35. In forming the opinion that umpires who comprise the class of entities to whom this Ruling applies are engaged in a pastime or hobby, we have taken into account the number of matches at which they officiate, the seniority of the football leagues and the links with the community, particularly the social benefits of participation and the quantum of the fees that they can receive.

Travel allowance

36. In addition, the travel allowance does not constitute 'ordinary income' as it is considered to be a reimbursement of an umpire's expenditure in regard to a private or personal pursuit.

Statutory income

37. Section 6-10 of the ITAA 1997 includes in assessable income amounts that are not ordinary income; these amounts are statutory income. A list of the statutory income provisions can be found in section 10-5 of the ITAA 1997. That list includes references to paragraphs 26(e) and 26(eaa) of the ITAA 1936.

38. Paragraph 26(e) of the ITAA 1936, 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 ...

39. Paragraph 26(eaa) of the ITAA 1936, 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) 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'.

41. The match fees of umpires are considered to be 'receipts incidental to a pastime' (refer to paragraphs 33 to 35 of this Ruling). 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'.

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) 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 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 to paragraphs 33 to 35 of this Ruling), 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 travel allowance received by the umpires are not assessable income, all losses and outgoings that are incurred in connection with their umpiring activities are not allowed as a deduction under section 8-1 of the ITAA 1997 or any other provision of the ITAA 1997.

Pay As You Go (PAYG) withholding

47. As explained above, match payments paid 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 TAA. An entity making match payments to umpires who are in the class of entities to which this Ruling applies will not be required to withhold amounts from these payments nor would they have any other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, payment summaries, annual reporting.

Appendix 2 – Detailed contents list

48. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

Subject references:

- allowances
- assessable income
- hobby vs business
- motor vehicle allowances
- 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
 - ITAA 1997 10-5
 - FBTAA 1986 20
 - FBTAA 1986 22
 - TAA 1953
 - TAA 1953 Sch 1 Div 12
 - TAA 1953 Sch 1 357-75(1)
 - Copyright Act 1968
-

ATO references

NO: 2006/5755

ISSN: 1445-2014

ATOlaw topic: Income Tax ~~ Assessable income ~~ allowances and
benefits
Income Tax ~~ Assessable income ~~ other payments
Income Tax ~~ Deductions ~~ miscellaneous expenses
Income Tax ~~ Deductions ~~ motor vehicle expenses