

# ***CR 2006/85 - Income tax: assessable income: football umpires: North East Umpires Board receipts***



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## Class Ruling

### Income tax: assessable income: football umpires: North East Umpires Board receipts

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#### **ⓘ This publication provides you with the following level of protection:**

This publication (excluding appendixes) 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

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

### Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 6-10 of the ITAA 1997;
- section 8-1 of the ITAA 1997;
- paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936); and
- paragraph 26(eaa) of the 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 North East Umpires Board (NEUB) within North East Victoria and Southern New South Wales. In this Ruling these entities are referred to as 'umpires'.

4. The class of entities does not include umpires to the extent that they receive payments for umpiring Australian Rules Football matches for the former Albury Umpire League. Class Ruling CR 2005/101 applies to those payments.

## Qualifications

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

6. 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 14 to 26 of this Ruling.

7. 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

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9. This Ruling applies from 1 April 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.

10. 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)).

11. 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.

12. 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).

## Previous Rulings

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13. This Ruling replaces CR 2005/101, which is withdrawn from 1 April 2006.

## Scheme

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14. 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 29 June 2006; and
- information provided in telephone conversations with the applicant.

15. The NEUB was set up in March 2006 to merge the Albury Umpires League and the Wangaratta Umpires Board to administer and co-ordinate the functions of providing umpires for Australian Rules Football within North East Victoria and Southern New South Wales for the following:

- Ovens and Murray Football League;
- Ovens and King Football League;
- Tallangatta Football League;
- Benalla and District Football League;

- Coreen and District Football League;
- Hume Football League;
- Upper Murray Football Netball League;
- Albury Wodonga Junior Football League;
- Wangaratta and District Junior Football League;
- TAC Cup;
- Murray Bushrangers School Competitions;
- Ovens and Mitta School District Competitions; and
- North East District Secondary School Sports Association.

16. The NEUB issues invoices to the respective leagues each week, following participation in the match, for umpires who have been appointed to their League's particular match. This invoice covers match fees, insurance and travel costs. The NEUB retains an average of 18 percent of the match fees to cover items such as administration costs, Workcover insurance for those umpires who have been injured, training and development, as well as other expenses incurred by the NEUB. The balance of the invoice is paid to each umpire as a match fee and travel allowance via electronic funds transfer into their nominated bank account on a weekly basis.

17. The umpires are paid a match fee for each game they umpire as well as a travel allowance when they use their own vehicles to travel to the match venues.

18. Field umpires are the highest paid umpires with the top rate being \$144 per match, this depending on the level of the game and the status of the umpire. Goal and boundary umpires attract a lower rate.

19. The current rate of travel allowance is 50 cents per kilometre and is calculated from the Albury, Benalla or Wangaratta Base (depending on where the umpire is registered) to the match venue and return. The greatest round trip is approximately 500 kilometres. An umpire will only be paid a travel allowance if they are selected to transport other umpires to and from the match venue.

20. The total match fees and travel allowance received in a season depends on the level and number of games at which an umpire officiates, but the maximum in any given financial year would be approximately \$3,500.

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

22. The only requirement for an umpire to officiate for the NEUB is to obtain membership of the NEUB, currently costing \$45 for members from the age of 18 and \$25 for members less than 18 years of age.

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

24. In all cases, umpires are appointed to matches by the respective Coaching Panels of the NEUB, with no club or league having any influence over the selection process. All appointments are on merit whereby the most experienced and capable umpires are allotted to the more senior or important matches.

25. Umpires are required to incur expenditure for their own match uniforms, training gear, running shoes, whistles, wristbands, flags, rain jackets as well as other expenses.

26. 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 enjoy the social camaraderie and meet friends on a regular basis.

## **Ruling**

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27. The match fees and travel allowance paid to umpires who officiate at matches for the NEUB within North East Victoria and Southern New South Wales are not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

28. 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.

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**Commissioner of Taxation**

30 August 2006

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## 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.*

29. 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

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

31. 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.

32. 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.

33. 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.

34. Participation in activities generating pastime or hobby receipts is a social or personal pursuit of a non-commercial nature. Pastime or hobby 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***

35. The sporting activities of umpires appointed to umpire NEUB 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.

36. The match fees are not intended to, nor do they usually, cover expenses. The stated 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.

37. 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 league, the links with the community (particularly the social benefits of participation), and the quantum of the fees that they can receive.

#### ***Travel allowance***

38. 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***

39. 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.

40. 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 ...

41. 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 it in that section...

## **Match fees**

42. 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'.

43. The match fees of umpires are considered to be 'receipts incidental to a pastime' (refer to paragraphs 35 to 37 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 the fees received in respect of 'services rendered'.

## **Travel allowance**

44. 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.

45. 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.

46. 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'.

47. Given the match fees of umpires are considered to be 'receipts incidental to a pastime' (refer to paragraphs 35 to 37 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 is the allowance received in respect of 'services rendered'.

### **General deductions**

48. 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**

49. 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, providing payment summaries or annual reporting.

## **Appendix 2 – Detailed contents list**

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

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## References

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### *Previous draft:*

Not previously issued as a draft

### *Previous Rulings/Determinations:*

CR 2005/101

### *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

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### ATO references

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