


# ***CR 2007/23 - Income tax: assessable income: umpires and referees: Warwick Leisure Centre receipts***

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## Class Ruling

### Income tax: assessable income: umpires and referees: Warwick Leisure Centre 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 (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided 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; and
- section 15-2 of the ITAA 1997 (former paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936)).

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

## Class of entities

3. The class of entities to which this Ruling applies are referees and umpires who receive payments for officiating in basketball, netball, volleyball and badminton competitions held at the Warwick Leisure Centre Western Australia. In this Ruling umpires and referees are referred to as 'referees'.

## 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 13 to 26 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

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8. This Ruling applies from 1 April 2006.

9. 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).

## **Scheme**

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13. The following description of the scheme is based on information provided by the applicant.

14. The Churches of Christ Sport and Recreation Association Inc. (CCSRA) operate the Warwick Leisure Centre and administer Basketball, Netball, Volleyball and Badminton competitions. The Warwick Leisure Centre is a not for profit organisation and is an Income Tax Exempt Charity (ITEC).

15. Referees are paid a game fee for each game they officiate at and amounts received in a season depend on the level and number of games at which a referee officiates. Currently, the maximum payment is \$13.50 per game.

16. The total game fees received by the vast majority of referees in an income year are less than \$3,950, with the average being \$1,100 approximately.

17. All games are of 45 minutes duration.

18. In addition to a game fee, all referees receive a subsidised referee shirt which must be worn when officiating.

19. The CCSRA pays referees on a fortnightly basis via electronic funds transfer for game payments.

20. The referees do not receive any allowances and benefits other than their game fee and subsidised uniform costs.

21. To be eligible to referee games in the CCSRA, the referee must nominate themselves to the coordinator of the competition, and then be assessed according to their level of qualification and practical ability on the court.

22. The referees adhere to the Constitution and By-Laws of the CCSRA, Rules of either basketball, netball, volleyball or badminton and the guidance and instructions of the CCSRA games coordinator and Sport Manager. The game to which they are appointed each week is solely at the discretion of the relevant games coordinator. The CCSRA rearranges rosters when referees cannot perform their officiating duties.

23. Referees would typically officiate at more than one game per week. However, it is highly unlikely that a referee would officiate at more than three games in any one competition (day or evening). Referees may officiate for more than one competition per week, but that is the exception rather than the rule and usually relates to an atypical 'fill in' situation.

24. Referees pay for their own transport to and from the Warwick Leisure Centre.

25. Referees are required to incur expenditure for their own shoes (typically white trainers appropriate to the particular sport), training gear, track suits, whistles, wristbands and other equipment. Game shirts are required when officiating and are provided to referees at a 50% subsidised cost.

26. The game fees are not intended to, nor do they usually, cover expenses incurred by the referees. 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 referees contend that the primary motivation for refereeing is a love of the sport they participate in as officials and a desire to contribute to the community in which the game is played. Refereeing also provides the opportunity to be involved in the game, achieve a greater fitness level and enjoy the social camaraderie provided by involvement in the competitions.

## Ruling

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27. The game fees paid to referees who officiate at competition matches held at the Warwick Leisure Centre are not assessable income under either section 6-5 or section 6-10.

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

## Appendix 1 – Explanation

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**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) 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.

### **Game fees**

35. The sporting activities of referees appointed to officiate CCSRA games are considered to constitute a pastime or hobby and therefore, the game fees received from the pursuit of that pastime or hobby are not assessable income.

36. The game 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 referees 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 games at which they officiate, the standard of the competitions, the links with the community (particularly the social benefits of participation), and the quantum of the fees that they can receive.

### **Statutory income**

38. Section 6-10 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. That list includes reference to section 15-2.

39. Subsection 15-2(1) provides that:

Your assessable income includes the value to you of all allowances, gratuities, compensations, benefits, bonuses and premiums\* provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you...

40. Prior to 14 September 2006, the former paragraph 26(e) of the ITAA 1936 applied to referees in the same manner to section 15-2 of the ITAA 1997.

**Game fees**

41. The main issue to consider with respect to section 15-2 is whether the payment is '...provided to you in respect of...any employment of or services rendered...' Whilst the referees are not considered 'employees', section 15-2 also includes in assessable income those allowances, etc., which are paid 'in respect of' services rendered.

42. The game fees of referees are not assessable under section 15-2 because the referees are not considered to be employees, nor are the payments received 'in respect of' services rendered.

**General deductions**

43. As the game fees received by the referees are not assessable income, all losses and outgoings that are incurred in connection with their officiating activities are not allowed as a deduction under section 8-1 or any other provision of the ITAA 1997.

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

44. As explained above, game payments paid to a referee 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 game payments to referees 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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45. 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

*Subject references:*

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

*Legislative references:*

- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 15-2(1)
- 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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