


CR 2009/42 - Income tax: assessable income: soccer referees: Football NSW referees

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Class Ruling

Income tax: assessable income: soccer referees: Football NSW referees

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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

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*).

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 is individuals who receive payments from Football NSW Ltd to officiate in Football NSW Premier League soccer matches as Grade 20 Referees (Referees, Assistant Referees or 4th Officials). In this Ruling, these individuals are collectively referred to as referees.
4. The class of entities does not include referees who officiate in Football NSW Premier League 1st Grade matches.

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 10 to 17 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

9. This Ruling applies from 1 November 2009. The Ruling continues to apply after 1 November 2009 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

10. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with the description:

- the application for class ruling (dated 29 January 2008);
- further information supplied by the applicant (dated 9 April 2008); and
- further information supplied by the applicant (dated 17 July 2009).

11. Football NSW Ltd makes payments to referees to officiate in Football NSW Premier League soccer matches.

12. The amount paid to referees varies depending on whether they officiate as a Referee, Assistant Referee or 4th Official. Match fees currently range from \$49 to \$89.

13. Restrictions apply to limit the number of matches a referee can officiate in during a season.

14. The total match fees received by a referee in a season depends on the number of matches in which they officiate as well as the factors in paragraph 12 of this Ruling, but the maximum earned by a referee officiating in Premier League Grade 20 in the 2008 season was \$1,958, with the average being around \$627.

15. In addition to match fees, referees are also paid a travel allowance of between \$28 and \$55 when they are required to officiate in Bathurst, Orange, Canberra, Lithgow or the Central Coast.

16. Referees are required to incur expenditure on the purchase and maintenance of uniforms, travel, membership fees and levies and resource material. The money received for officiating does not typically cover the expenses incurred.

17. The primary motivation for referees' involvement in refereeing is personal pleasure from a hobby rather than deriving income from the activity.

Ruling

18. The match fees and travel allowance payments made by Football NSW Ltd to referees officiating in the Football NSW Premier League are not assessable income under either section 6-5 or section 6-10.

19. Losses and outgoings incurred by the referees officiating in the Football NSW Premier League in connection with their activities cannot be claimed as a deduction under section 8-1 or any other provision of the ITAA 1997.

Commissioner of Taxation

19 August 2009

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.*

20. 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

21. Under subsection 6-5(1) an amount is assessable income if it is income according to ordinary concepts (ordinary income).

22. 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.

23. 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.

24. 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 will not be included in the taxpayer's assessable income as ordinary income of the taxpayer.

25. 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.

26. The activities of the referees associated with the Football NSW Premier League, other than referees who officiate in 1st Grade matches, are accepted as being a social or personal pursuit of a non-commercial nature, which is motivated by their personal enjoyment in participating in the sport.

27. The referee's participation in refereeing activities is accepted as constituting a pastime or hobby and the payments received are accepted as being from the pursuit of that pastime or hobby rather than an income producing activity. Thus the payments are not ordinary income.

28. In forming the opinion that referees who comprise the class of entity 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 quantum of payments they can receive, the social benefits of participation, and the level or division of the sporting competition.

Statutory income

29. 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.

30. 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...

31. 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.

32. The payments received by referees are considered to be incidental to a pastime and not a product or incident of any employment or a reward for services rendered. As such, they are not assessable under section 15-2.

General deductions

33. As the payments received by the referees are not assessable income, all losses and outgoings that are incurred in connection with these 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

34. As explained above, payments made 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 of Schedule 1 to the TAA. An entity making 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

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings

TR 1999/17; TR 2006/10

Subject references:

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

Legislative references:

- ITAA 1936 26(e)
- ITAA 1997
- 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 Sch1 Div 12
- Copyright Act 1968

ATO references

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Income Tax ~~ Deductions ~~ miscellaneous expenses