


***CR 2009/55 - Income tax: assessable income:
Football Umpires: Latrobe Valley Umpires
Association Incorporated***

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Class Ruling

Income tax: assessable income: Football Umpires: Latrobe Valley Umpires Association Incorporated

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① 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 provisions 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.

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 all individuals who receive payments from the Latrobe Valley Umpires Association Incorporated (LVUA) to officiate Australian Rules matches as umpires in the Gippsland region in the state of Victoria.

4. Those entities described in paragraph 3 of this Ruling to whom this Ruling applies are collectively referred to in this Ruling as umpires.

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 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

9. This Ruling applies from 1 July 2009. 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 in the application for class ruling dated 8 June 2009.
11. The LVUA provides umpires to Australian Rules football leagues located in the Gippsland region in the state of Victoria.
12. The LVUA was set up to administer and co-ordinate the sport of Australian Rules football in the Gippsland region of Victoria. This co-ordination and administration extends to the provision of umpires in the West Gippsland Latrobe Football League and the Mid Gippsland Football League (the Leagues).
13. The LVUA issues invoices to the Leagues for umpires who have been appointed to umpire the Leagues' matches.
14. The LVUA retains a percentage of the fees charged to cover administration expenses and WorkSafe Injury Insurance, which covers loss of occupational income in the event of injury, but not loss of match payments and other expenses incurred by the LVUA. The balance is paid to the umpires as match fees, via electronic funds transfer, into their nominated financial institution, normally on a monthly basis.
15. Umpires are paid a match fee for each game they umpire and amounts received in a season depend on the level and number of games at which an umpire officiates. Current fees are such that the expected ceiling of amounts any umpire would receive in a season is between \$2,500 and \$3,000.
16. All fees paid to other umpires, including boundary umpires and goal umpires in lesser competitions, are less than the amounts referred to above.
17. Umpires do not receive any allowances or benefits other than their match fees and travel allowances. No allowances are received by the umpires for tribunal attendance or training.
18. The travel allowance, which is currently set at \$0.63 per kilometre, is paid to umpires that are nominated drivers for a particular game. Nominated drivers are given designated umpire pick ups for a match, with the allowance calculated on the number of kilometres from the base location (Morwell Post Office) to the game and return.
19. All umpires are members of the LVUA. To obtain membership of the LVUA an umpire has to complete an application form. A membership fee, set at the Annual General Meeting each year, is payable by all umpires.
20. Current membership fees are \$80 for adults and \$30 for juniors. Membership fees assist in the running of the LVUA.

21. Umpires are in all cases appointed to matches by the LVUA and no club or League has any influence over which umpires are appointed to which games.

22. All appointments are based on merit, whereby the most experienced and capable umpires are appointed to the more senior or important games. All umpires appointed to games are assessed for their ability and further appointments are governed by their capabilities.

23. Umpires may officiate at more than one match per week although this is avoided where possible. It is highly unlikely that an umpire would officiate at more than 30 matches in a season.

24. All LVUA members incur expenditure for match uniforms and training gear, including shoes, whistles, wrist bands, socks, shorts and shirts. Goal umpires incur expenditure on trousers, coats, ties, caps, flags and flag sticks. As well as uniforms for matches, there are other requirements such as shirts, trousers, shoes, jackets and polo shirts, being the required dress code for umpires to attend matches.

25. The purpose of the payments made by the LVUA is to encourage members of the wider community to participate in local sporting activities by subsidising the cost associated with the participation.

26. 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 for an umpire to be involved in the game, achieve a greater level of fitness and meet friends on a regular basis.

Ruling

27. The match fees and travel allowances paid by the LVUA to umpires officiating in the Leagues are not assessable income under sections 6-5, 6-10 or 15-2.

28. Losses and outgoings incurred by umpires officiating in the Leagues in connection with their activities as an umpire cannot be claimed as a deduction under section 8-1 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.*

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. Subsection 6-5(1) provides that the assessable income of a taxpayer includes income according to ordinary concepts (ordinary income).

31. The legislation does not provide specific guidance on the meaning of income according to ordinary concepts. However, a substantial body of case law exists which identifies likely characteristics.

32. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*,¹ the Full High Court stated:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

33. Amounts that are periodical, regular or recurrent, relied upon by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income, as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.² Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.³

¹ (1990) 170 CLR 124 at 138; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

² *Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

³ *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; (1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 456 (per Fullagar J).

34. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁴ The whole of the circumstances must be considered⁵ and the motive of the payer may be relevant to this consideration.⁶

35. 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 their assessable income as ordinary income, even if the receipts are regular or periodical.

36. A pastime or hobby can be described as a social or personal pursuit of a non-commercial nature. Amounts received from engaging in a pastime or hobby are generally not intended to, and often do not, cover expenses.

37. The Commissioner accepts that the activities of the umpires who receive payments from the LVUA are a social or personal pursuit of a non-commercial nature and constitute a pastime or hobby, with the payments received being from the pursuit of that pastime or hobby. Consequently, the payments received are not assessable as ordinary income.

38. In forming the opinion that the umpires are engaged in a pastime or hobby, the Commissioner has taken into account the number of matches at which they officiate, the amount and the purpose of the payments they can receive, the factors that can motivate their participation, and the level or division of the sporting competition.

Statutory income

39. Section 6-10 includes in assessable income certain amounts that are not ordinary income. These amounts are called statutory income. A list of the statutory income provisions can be found in section 10-5. That list includes a reference to section 15-2.

40. Subsection 15-2(1) states that:

Your assessable income includes the value to you of all allowances, gratuities, compensation, 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...

⁴ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 375; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73; (1956) 6 AITR 248 at 254; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375 at 402; 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

⁵ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627-628 per Kitto J.

⁶ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

41. Amounts that are a reward or remuneration for services rendered, or a product, incident or consequence of employment, come within the scope of subsection 15-2(1).⁷

42. Umpires covered by this Ruling are not considered to be employees of the LVUA. The payments are considered to be incidental to a pastime or hobby and not a product or incident of any employment or a reward for services rendered by them. As such, the payments are not assessable under section 15-2.

43. As the payments are neither ordinary nor statutory income, they are not assessable income of the umpires who receive them.

General deductions

44. As the payments received by the umpires are not assessable income, all losses and outgoings that are incurred in connection with these activities are not allowable as a deduction under section 8-1 or any other provision of the ITAA 1997.

Pay As You Go (PAYG) withholding

45. As explained above, payments made to an umpire engaged in a hobby or pastime activity are not assessable income. The payments are not regarded as withholding payments under Division 12 of Schedule 1 to the *Taxation Administration Act 1953*. An entity making 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.

⁷ *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274.

Appendix 2 – Detailed contents list

46. 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/Determinations:

TR 2006/10

Subject references:

- hobby vs business
- income
- PAYG withholding
- sport
- sports officials
- sporting organisations
- sportspersons
- voluntary payments to sportspersons

Legislative references:

- 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 Sch 1 Div 12
- Copyright Act 1968

Case references

- Commissioner of Taxation v. Rowe (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392

- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5 AITR 443
- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation (1977) 34 FLR 375; 77 ATC 4255; (1977) 7 ATR 519
- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 AITR 248
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367
- Smith v. Federal Commissioner of Taxation (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274
- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570

ATO references

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