CR 2014/49 - Income tax and fringe benefits tax: payments made under the Education and Training Grant Program provided by the Rugby Union Players' Association

Class Ruling

Income tax and fringe benefits tax: payments made under the Education and Training Grant Program provided by the Rugby Union Players' Association

Contents Para

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 provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

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

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 10-5 of the ITAA 1997
- section 15-2 of the ITAA 1997
- Part XIB of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA)
- subsection 136(1) of the FBTAA.

All subsequent references in this Ruling are to the ITAA 1997, unless stated otherwise.

Class of entities

3. The class of entities to which this Ruling applies is Australian and/or state rugby union players who hold current Rugby Union Players' Association (RUPA) membership and are:

- currently contracted on a Standard Playing Contract (SPC), or
- no longer playing in Australia but had been contracted in any season between 2007 – 2013 for the first three years only following the end of their final standard playing contract in Australia, and
- in receipt of payments under the Education and Training Grant Program (Program).

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 8 to 44 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.

Date of effect

7. This Ruling applies from 1 April 2013. 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

8. 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:

- Request for Opinion dated 27 February 2014.

- Constitution of The Rugby Union Players Association Inc (Constitution).
- Australian Rugby Collective Bargaining Agreement (CBA).
- RUPA Player Development Program Application Form.
- SPC.
- Further information dated 14 April 2014 and 14 May 2014.

9. RUPA is an independent, representative sporting body established to represent the interests of past or present professional rugby union players.

10. Its membership base extends to individuals who formaly or currently play at a national or state level and includes both male and female players.

11. As stated in its Constitution, the objects of The RUPA are:

a) to provide its Members with an Association dedicated to the promotion and advancement of the sport of Rugby Union;

b) to promote and protect the interests of all Members and to safeguard their rights at all times;

c) to strive for the improvement of economic and other conditions generally and to regulate and correct abuses relative thereto;

d) to secure and maintain freedom from unjust and unlawful rules and regulations affecting each Member's career in the sport of Rugby Union;

e) to assist Members in securing employment;

f) to assist Members to obtain accident, injury, insurance, education, hardship, welfare and retirement benefits for all Members;

g) to provide a medium through which the Members may express their views on issues concerning their well-being;

h) to provide legal advice and legal assistance in defence of Member's rights where deemed necessary;

i) to publish an Association Newsletter;

j) to elect from time to time Members as Directors on the Boards of Directors of any of the Rugby Bodies;

k) to promote and ensure that at least five (5) Australian Rugby Teams compete in the tournament known as the 'Super Rugby Tournament' or such other Rugby tournament that may replace the 'Super Rugby Tournament';

l) to enter into the Collective Bargaining Agreement and cause to have made Industrial Agreements that regulate, protect and further the employment, professional and personal interests of Members;

m) to represent, act on behalf of, negotiate, or act as the bargaining agent for Members or do anything else in relation to any industrial dispute or any other matter pertaining to the relations between Members and any employer or person responsible for the administration of Rugby Union including any of the Rugby Bodies;

n) to promote recognition and acceptance of the rights of Members by eliminating discrimination against Members on the basis of age, impairment, industrial activity, equality, marital status, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, status as a parent or carer or personal association;

o) to make or cause to have made awards recognising outstanding achievements and contributions of Members as Rugby Union Players and in other capacities including in education, business, the community and through charitable initiatives and activities.

12. RUPA currently provides the following services to its members:

- Collective bargaining
- Player advocacy
- Education and welfare support
- Career development
- Agent accreditation
- Insurance
- Superannuation, and
- Workplace health and safety.

Employment status of players

13. A Members of RUPA are not employees of RUPA. The only relationship between RUPA and the individual player is that of Association and Member.

14. Australian professional rugby union players are initially employed by their relevant State Union. If selected for national representation they will also be employed by the Australian Rugby Union (ARU).

15. The ARU is the governing body for rugby union in Australia.

16. A player enters into a SPC with both their State Union and ARU which details the terms of their employment. The contractual obligation of both possible employers is encapsulated in the SPC which contemplates the possibility of national representation.

17. Under the SPC, players are encouraged to undertake a program of career and training development.

18. The SPC contemplates players pursuing their training and development in defined rest periods.

Relationship between RUPA and ARU

19. The ARU entered into CBAs with RUPA and the state rugby union bodies.

20. As a condition of the CBAs, the ARU is required to fund player development programs run by RUPA.

21. RUPA invoices the ARU annually for these costs.

Education and Training Grant Program

22. In fulfilment of its functions and goals, RUPA has established and operates the Program to encourage players to begin planning and preparing for their lives after rugby union by providing payments for approved professional development expenses.

23. Under the Program, payments will only be provided for bona fide approved professional development pursuits which have been determined as clearly enhancing an applicant's vocationally assessed current or future career opportunities.

24. Approved professional development opportunities are as follows:

- tertiary education or vocational education (nationally accredited and approved courses)
- on the job training programs
- some post rugby retirement related issues, and
- training and/or professional development to assist with future self-development and/or small business ownership.

25. Payments will apply to course and student fees, prescribed course texts, private tuition or mentoring required in order for applicants to pursue the approved professional development.

26. The Program does not cover living expenses or items such as stationery, general equipment, transport or business set up costs.

Eligibility Criteria

27. Eligibility for the Program is restricted to RUPA members and is based upon an objective analysis of the applicant meeting the criteria.

28. RUPA is under no legal obligation to approve an application.

29. As per its CBA, ARU is bound to provide a set maximum amount of financial assistance to RUPA each year to fund the Program. Increases in each year will be calculated on the basis of CPI or such other amounts as agreed to in writing.

30. Where player applications exceed the annual funds available in any year the following means testing of payments will occur regarding the assessment of claims:

- Applicants with salaries between the CBA minimum salary and $100,000 are eligible for up to 100% of claim.
- Applicants with salaries between $101,000 and $200,000 are eligible for up to 75% of claim.
- Applicants with salaries in excess of $200,000 are eligible for up to 50% of claim.

31. Applicants who have stopped playing in Australia will be classified using their last contracted salary.

32. Funding levels are capped at a maximum of $5,000 per year with a career cap of $25,000 subject to the number of years an applicant has been contracted.

33. In some cases budgeted grant money may not be exhausted by allocations to players each year. This excess budgeted money is retained by RUPA. It will generally be made available as part of the following year's Program.

34. RUPA has formed a Player Development Program Committee to provide a governance role in determining selection criteria for the Program.

35. Allocation of funds under the Program is determined at the absolute discretion of the Player Development Program Committee. The value of payment provided will be determined by the number of applications, the type of course being completed and the applicant's commitment to study.

36. The current Player Development Program Committee comprises the following:

- 3 RUPA Representatives
- 3 ARU Representatives, and
- 1 Independent Chairperson.

37. It is compulsory that applicants must have undertaken an individual career assessment, transitional assessment (including vocational assessment) or seasonal review with a State Advisor within two months prior to applying for funds. Applicants must also have developed a history of pursuing tertiary, trade or vocational studies or be actively seeking career options available to them.

38. In practice, the applicant will meet with a RUPA employed Player Development Manager to map out a plan with respect to education and career development for their possible employment prospects in their post rugby life.

39. Payments will not be provided until the application has been approved by the national Player Development Manager.

40. There are no obligations on the funding recipients to provide any services, make appearances or similar activities for RUPA or anyone else as a result of receiving a payment.

Payment Process

41. Before RUPA reimburses the applicant for the course fees the player must successfully complete the course.

42. Payments will be made upon receiving a dated invoice or receipt for the claimed amount of legitimate educational expenses from an accredited education institution. RUPA will then provide an electronic funds transfer for the approved amount.

43. Payments will be made either directly to the educational institution and/or to the player.

44. No amount of funding is provided by a commercial sponsor.

Ruling

Education and Training Grants Program

Ordinary income

45. Amounts received under the Education and Training Grant Program are not assessable as ordinary income under section 6-5.

Statutory income

46. Amounts received under the Education and Training Grant Program are not assessable as statutory income under section 15-2.

Fringe benefits tax

47. A payment under the Education and Training Grant Program, being the relevant benefit, made to a member of RUPA who is also an employee of a State Union and/or ARU will not result in an applicant having a reportable fringe benefit amount for the purposes of Part XIB of the FBTAA.

Capital gains tax

48. There are no CGT consequences when an eligible player receives amounts under the Education and Training Grant Program.

Commissioner of Taxation

18 June 2014

Appendix 1 – Explanation

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.

49. A payment or other benefit received by a taxpayer is included in assessable income if it is:

- income in the ordinary sense of the word (*ordinary income*), and
- an amount or benefit that through the operation of the provisions of the tax law is included in assessable income (*statutory income*).

Ordinary income

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

51. 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.

52. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*, 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.[1]

53. 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,[2] as are amounts that are the product, in a real sense, of any employment of, or services rendered by, the recipient.[3] Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.[4]

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[1] (1990) 170 CLR 124 at 138; [1990] HCA 25 at [14]; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.
[2] *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; [1952] HCA 65; (1952) 10 ATD 82; (1952) 5 AITR 443.
[3] *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; [1956] HCA 21; (1956) 11 ATD 68; (1956) 6 AITR 248; *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; [1995] FCA 1611; 95 ATC 4691; (1995) 31 ATR 392.
[4] *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; [1952] HCA 65 at [7];(1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 456 (per Fullagar J).

54. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.[5] The whole of the circumstances must be considered[6] and the motive of the payer may be relevant to this consideration.[7]

55. In *Scott v. Federal Commissioner of Taxation,*[8] Windeyer J considered whether a gratuitous payment to the taxpayer's solicitor was income. His Honour held that, to be income, the gratuitous payment had to be in a relevant sense a product of the donee's income-producing activities.[9] In *Federal Commissioner of Taxation v. Harris*,[10] a bank made a lump-sum payment to supplement a former employee's pension so as to alleviate the negative effects of high inflation. The majority held that the payment was not a product of the former employment and this was an important element in finding that the payment was not income.

56. There is no employment or business relationship between the individual players and RUPA. A successful applicant is not required to enter into any contractual relationship with either the RUPA or a commercial sponsor to perform services of any kind in return for the payment of the grant monies. RUPA is under no legal obligation to approve an application.

57. Payments can be applied to course and student fees, prescribed course texts, private tuition or mentoring required in order to pursue approved professional development. Payments do not specifically contribute towards the player's living expenses. Payments are only made for approved, substantiated expenses.

58. The timing of a payment varies, depending on the expense claimed. Payments are only made upon receipt of a dated invoice or receipt.

59. The payments are not periodic payments, even if the expense should arise more than once. The payment is not expected or relied upon by the recipient to meet ordinary living expenses.

60. These factors, when considered together, lead to the conclusion that payments under the Program are not ordinary income under subsection 6-5(1).

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[5] *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; [1966] HCA 48 at [22]; (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] HCA 21 at [17]; (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; [1977] FCA 3 at [35]; 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

[6] *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627; [1953] HCA 13 at [3]; (1953) 5 AITR 496; 24 ATR 527. (per Kitto J)

[7] *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; [1966] HCA 48 at [22] ; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

[8] 117 CLR 514; [1966] HCA 48; (1966) 14 ATD 286; (1966) 10 AITR 367.

[9] At 527 and [22].

[10] (1980) 43 FLR 36; [1980] FCA 60; 80 ATC 4238; (1980) 10 ATR 869.

Statutory income

61. Section 6-10 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included as assessable income by another provision.

62. Section 10-5 lists provisions about statutory income and included in this list is section 15-2.

63. Section 15-2 provides that the value of all allowances, gratuities, compensation, benefits, bonuses and premiums allowed, given or granted, directly or indirectly in respect of employment or services rendered is included in assessable income.

64. A payment under the Program will be statutory income under section 15-2 if it is provided to the eligible player in respect of, for, or in relation directly or indirectly to, any employment or services rendered by the eligible applicant.

65. There is no employment relationship between the grant recipient and RUPA. Furthermore, the documents explaining the scheme establish that the recipients are not providing services to the RUPA. The recipients are required to meet certain conditions in order to qualify for payment of the grant. These do not amount to the rendering of services to RUPA.

66. As such the payments are not assessable under section 15-2 because the players are not considered to be employees, nor are they rendering services to RUPA.

Fringe benefits tax

67. In general terms, a 'fringe benefit' is a 'benefit' provided to an employee in respect of the employee's employment that is not an exempt benefit.

68. The definition of 'benefit' in subsection 136(1) of the FBTAA includes any right, privilege, service or facility.

69. The definition of a fringe benefit is also contained in subsection 136(1) of the FBTAA. It is not confined to benefits that are provided to an employee or to an associate by an employer or an associate of the employer. Under paragraphs (e) and (ea) of the definition it may include benefits provided by others under an arrangement or where the employer or associate knowingly participate in or facilitate the provision of the benefits, or the promotion of a scheme or plan involving the provision of the benefits. However, to constitute a fringe benefit as defined, the benefit must be provided in respect of the employment of an employee and not be excluded by any of the specific exclusions within the definition.

70. Under a SPC a player (who may be a recipient of a benefit under the Program) is employed by their State Union and/or the ARU who are associates as defined in the FBTAA.

71. RUPA is the provider of the benefits under the Program.

72. RUPA is neither an employer of any recipient of a benefit under the Program nor an associate of ARU or any State Union.

73. To determine whether an applicant (who is an employee of their relevant State Union and/or the ARU) will have a reportable fringe benefits amount for the purposes of Part XIB of the FBTAA, we need to consider amongst other considerations, whether the applicant receives a fringe benefit.

Payments by ARU

74. A Payment by the ARU to RUPA for the costs of funding the Program (in part or in full) does not give rise to a fringe benefit as the identity of each employee who will apply for and receive a benefit from RUPA under the Program will not be known with sufficient particularity at the time the ARU pays the invoice. Such a payment is not made in respect of the employment of an employee.

75. However, we need to consider and determine whether a benefit provided under the Program to a member of RUPA, who is also an employee or former employee of the ARU or a State Union, being a payment of the employee's approved professional development expenses, falls within the definition of fringe benefit.

76. Based on the scheme as described and notwithstanding that a benefit provided to an employee under the Program is not provided by the employer or an associate of the employer, it is considered that such a benefit will fall within paragraph (e) or paragraph (ea) of the definition of fringe benefit in subsection 136(1) of the FBTAA and an employee will have received a benefit as defined in subsection 136(1) of the FBTAA.

77. Therefore, for a payment made under the Program to come within the definition of a fringe benefit, what must be established is that the benefit is provided in respect of the employment of the employee (the employment connection test) and that none of the exclusions in the definition apply to the benefit.

In respect of employment

78. The term 'in respect of employment' has been considered by the courts on numerous occasions. In *J and G Knowles and Associates Pty Ltd v. Commissioner of Taxation*[11] the full Federal Court examined the definition of fringe benefit and noted that:

> ...Whatever question is to be asked, it must be remembered that what must be established is whether there is a sufficient or material, rather than a, causal connection or relationship between the benefit and the employment...

[11] *J and G Knowles and Associates Pty Ltd v. Commissioner of Taxation* [2000] FCA 196; 2000 ATC 4151; (2000) 44 ATR 22.

79. If a benefit provided to an applicant under the Program does have a sufficient or material connection with any current or previous employment of the applicant with the ARU or their State Union it will be a fringe benefit. On the other hand, a benefit will not be a fringe benefit if the connection or relationship between the benefit and the recipient's employment is merely causal.

80. Whether or not there is a sufficient connection between an applicant's employment and a benefit received under the Program is a question of fact that needs to be determined on an objective basis taking all relevant facts into account.

Connection between the benefit and a player's employment

81. The following is a summary of the connection or relationship between the benefits provided to an employee under the Program and the employment of the employee:

- The employees could not apply for benefits under the Program if they were not members of RUPA. The only way they could obtain benefits under the Program is by being members of RUPA, lodging an application with RUPA and having the application approved by RUPA.
- The benefits provided to employees under the Program are not made in proportion to the level of service provided by the employee to their employer. In fact, only players with a salary up to $100,000 are eligible for up to 100% of a claim under the Program. Players with a salary between $100,000 and $200,000 are eligible for up to 75% and players with a salary in excess of $200,000 are eligible for up to 50%. The lack of a sufficient relationship between the benefits and work performed by the recipients of the benefits, although not determinative on its own, suggests that the benefits are not provided in respect of employment.
- RUPA's objects include:
  - to enter into CBAs and cause to have made Industrial Agreements that regulate, protect and further the employment, professional and personal interests of Members, and
  - to assist members in securing employment.
- The ARU's objects include:
  - to act as *'Keeper of the code'* of the Game of Rugby in Australia from the grassroots to the elite level, and
  - to foster, promote and arrange Rugby throughout Australia.

- As a condition of the CBAs, the ARU is required to fund player development programs run by RUPA.
- RUPA invoices the ARU annually for the costs of funding the Player Development Programs.
- The ARU has a responsibility to ensure rules are in place for players to develop skills which will assist them post playing Rugby. This is part of its role in helping *'foster and promote'* the game of Rugby. It is in this governance role that the ARU provides funding for the program.
- The provision of a benefit under the Program is in respect of each applicant's membership of RUPA and not in respect of the applicant's employment with either a State Union and/or the ARU.
- There is no evidence which suggests that the benefits provided under the Program:
  - are provided under an agreement or intention that indicates that the benefits are an incident of an employee's employment
  - are intended to provide additional recompense for modest salaries
  - are a substitute for any salary sacrificed amounts
  - are the result of an arrangement being entered into or carried out for the sole or dominant purpose of enabling one or more employers to obtain a tax benefit in connection with the arrangement.

82. The Commissioner considers that the benefits provided to an applicant under the Program do not have a sufficient or material connection with current or previous employment of the applicant with the ARU or a State Union to fall within the definition of a fringe benefit for the purposes of the FBTAA.

Capital gains tax

83. There are no CGT consequences as a result of an applicant receiving an amount under the Program.

Appendix 2 – Detailed contents list

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

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 2006/10

Subject references:

- capital gains tax
- education payments
- employment relationship
- voluntary payments to sportspersons

Legislative references:

- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-5(4)
- ITAA 1997 6-10
- ITAA 1997 10-5
- ITAA 1997 15-2
- TAA 1953
- Copyright Act 1968

Case References:

- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation (1977) 34 FLR 375; [1977] FCA 3; 77 ATC 4255; (1977) 7 ATR 519
- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; [1952] HCA 65; (1952) 10 ATD 82; (1952) 5AITR 443
- Federal Commissioner of Taxation v. Harris (1980) 43 FLR 36; [1980] FCA 60; 80 ATC 4238; (1980) 10 ATR 869
- Federal Commissioner of Taxation v. Rowe (1995) 60 FCR 99; [1995] FCA 1611; 95 ATC 4691; (1995) 31 ATR 392
- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; [1990] HCA 25; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47; [1956] HCA 21; (1956) 11 ATD 68; (1956) 6 AITR 248
- J and G Knowles and Associates Pty Ltd v. Commissioner of Taxation [2000] FCA 196; 2000 ATC 4151; (2000) 44 ATR 22
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; [1966] HCA 48; (1966) 14 ATD 286; (1966) 10 AITR 367
- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570; [1953] HCA 13; (1953) 5 AITR 496; 24 ATR 527

ATO references

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