


# ***CR 2021/37 - Western Australian Debating League Incorporated - payments to League Members***

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## Class Ruling

# Western Australian Debating League Incorporated – payments to League Members

### **📌 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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### **What this Ruling is about**

1. This Ruling sets out the tax consequences of payments made by Western Australian Debating League Incorporated (WADL) to League Members.
2. Full details of this scheme are set out in paragraphs 7 to 20 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997).

**Note:** By issuing this Ruling, the ATO is not endorsing this service. Potential participants must form their own view about the service.

### **Who this Ruling applies to**

4. This Ruling applies to you if you are an individual that receives a payment from WADL:
  - to adjudicate at a debating event
  - to present at a debating event, or
  - as an honorarium.

### **When this Ruling applies**

5. This Ruling applies from 1 July 2020 to 30 June 2022.

**Ruling**

6. Adjudicator, presenter and honoraria payments you receive from WADL are not assessable as ordinary income for the purposes of section 6-5, nor are they statutory income for the purposes of section 6-10. Losses and outgoings incurred by you in respect of receiving these payments from WADL cannot be claimed as a deduction under section 8-1 or any other provision of the ITAA 1997.

**Scheme**

7. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

**Western Australian Debating League Incorporated**

8. WADL is a charity registered with the Australian Charities and Not-for-profits Commission.

9. The following is contained within the Constitution of Western Australian Debating League Incorporated dated 15 January 1997, which was last amended on 9 February 2020:

**4. Objects of the League**

The objects of the League are to –

- (a) organise and promote formal debate in Western Australia;
- (b) promote the activities of the Australian Debating Federation Incorporated in Western Australia;
- (c) select teams to represent the League at national and other championships;
- (d) promote unity and good fellowship amongst the members of the League;
- (e) liaise with other organisations with similar goals and interests; and
- (f) foster the interests of the League Members; ...

**10. League Member prerequisites**

Membership of the League shall be open to any natural person over the age of 16 or an entity who supports the objects and purposes of the League. No cost or subscription shall be levied onto members or be used to determine eligibility of members.

...

**16. League membership required to participate in the activities of the League**

Agents of the League including but not limited to adjudicators, presenters, Board Members, Executive Members or Department Members must be League Members.

10. WADL makes payments<sup>1</sup> to League Members for the following activities:
- school debate competitions
    - This covers school years 6-12 and consists of six preliminary rounds and four rounds of finals adjudication. Debates vary in time from 30 minutes to 45 minutes. Payments are \$26.50 per debate, \$80 for three debates in one night and \$135 per night for a head adjudicator.

<sup>1</sup> Payment amounts as 26 May 2021.

- internal adjudicating
  - Schools engage adjudicators via WADL for specialist school adjudications. Payment is \$30 per debate.
- regional adjudicating
  - Debates vary in time and regional adjudicators may be required to adjudicate one, two or three debates in each instance. Payments are between \$27 to \$45 per debate.
- presenting payments
  - Presentations comprise a number of debate topics called 'seminar' sub-units and WADL engages League Members to deliver one, two or three seminars over the course of these events, receiving a payment of \$45 to \$50 for each seminar.
- honoraria payments
  - Honoraria payments are administered by the WADL Board and are awarded from time-to-time as an acknowledgement to League Members that assist with and promote WADL's operations. The type of activities that the recipients of these payments can undertake include
    - scheduling, coordinating and managing WADL events and seminars
    - organising event participation, volunteer attendance and training
    - drafting, developing and distributing student development material
    - preparing and distributing financial statements and budgets
    - assisting WADL to comply with its reporting and compliance obligations.

League Members in receipt of an honoraria payment can spend between five and 25 hours a week to assist with WADL's operations. Time commitments change over the course of the debating calendar and also the number of projects and operations that are in place at each point throughout the year.

Recipients of these payments do not undertake similar activities as part of any regular employment or business that they carry on.

Honoraria payments are considered by the WADL Board irregularly over the course of a year and are awarded up to the amount of \$1,500.

11. The maximum amount WADL pays to any individual League Member to adjudicate or present at WADL events is \$2,880 per annum.

12. The maximum amount WADL pays to any individual in honoraria payments over a year is \$3,000 per annum.

13. Payments for WADL activities are paid out on a fortnightly cycle and are made subject to the following:

- provision of the individual's bank account details
- a signed statement by supplier form that indicates payments are made in pursuit of a hobby or private activity, and
- automated emails are sent indicating payments have been made.

14. Adjudicators and presenters are free to decline engagements. As a matter of courtesy, WADL ensures League Members who are adjudicators are given three debates a week during the debating season. Access to WADL programs is subject to passing written and verbal tests in addition to a practicum.

15. League Members engaged by WADL to participate in adjudicator or presenter activities are expected to act in accordance with WADL's Volunteer Code of Conduct, which was last updated on 7 February 2020.

16. WADL provides each League Member with a copy of their Volunteer Agreement, which was last updated 6 February 2020. This document sets out the mutual expectations and responsibilities of WADL and their volunteers. League Members are asked to sign this agreement to acknowledge that it has been read and that they have had an opportunity to ask questions prior to their engagement as adjudicators or presenters in WADL events.

17. Adjudicators or presenters are required to incur their own expenditure including travel, pens, paper and other relevant equipment. Adjudicators or presenters are advised not to expect reimbursement or payment for participating in events as payments are at the discretion of the volunteer executive committee.

18. The purpose of the adjudicator and presenter payments is to encourage members of the community to participate in debating activities by subsidising costs associated with involvement. These activities provide an opportunity for League Members with a keen interest in debating to develop their public speaking skills and meet friends on a regular basis.

19. WADL currently engages approximately 70 League Members in adjudicator or presenter activities who are involved in WADL events for an average of three years.

#### **When this Ruling does not apply**

20. This Ruling will not apply to you if you:

- also adjudicate or present at events other than those described in paragraph 10 of this Ruling, or
- receive a payment from WADL for activities that are similar to those performed in your regular employment or a business that you carry on.

If this is the case, your activities may have ceased to be that of a hobby or pastime.

If you are in this situation, you should discuss your circumstances with your taxation adviser or the ATO.

**Appendix – Explanation**

**①** *This Explanation 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.*

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**Payment is not included in assessable income**

21. 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)<sup>2</sup>, or
- an amount or benefit that through the operation of the provisions of the tax law is included in assessable income (statutory income).<sup>3</sup>

**Ordinary income**

22. Subsection 6-5(1) provides that an amount is included in your assessable income if it is income according to ordinary concepts.

23. 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.

24. In *GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth)*,<sup>4</sup> the 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.

25. Amounts that are periodical, regular or recurrent, relied upon by a 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.<sup>5</sup> Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.<sup>6</sup>

<sup>2</sup> Section 6-5.

<sup>3</sup> Section 6-10.

<sup>4</sup> [1990] HCA 25.

<sup>5</sup> *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21 (*Hayes*); *Commissioner of Taxation of the Commonwealth of Australia v Rowe, Anthony John Poulston* [1995] FCA 834.

<sup>6</sup> *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65, per Fullagar J.

26. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.<sup>7</sup> The whole of the circumstances must be considered<sup>8</sup> and the motive of the payer may be a relevant consideration.<sup>9</sup>

27. In *Scott*, 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. In *The Commissioner of Taxation of the Commonwealth of Australia v Harris, G.O.*<sup>10</sup>, 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 relationship and this was an important element in finding that the payment was not income.

28. 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.

29. 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.

30. The activities of League Members who participate as adjudicators and presenters in WADL events and who assist with WADL's operations are a social or personal pursuit of a non-commercial nature and constitute a pastime or hobby. Consequently, the payments received are not assessable as ordinary income.

31. In forming the opinion that the League Members are engaged in a pastime or hobby, the following factors have been taken into account:

- there is no employment or business relationship between the League Member and WADL
- a League Member does not enter into a contractual relationship with WADL, or any other affiliated member associations, to perform services of any kind in return for the payment
- League Members are free to engage in programs and activities as well as decline engagements as they see fit
- the amount of each adjudicator or presenter payment made by WADL is not intended to, and does not usually, cover League Members' expenses for attending a WADL event – the purpose of the payments to League Members is to encourage their participation in local events and activities by subsidising costs associated with their participation
- honoraria payments are awarded in acknowledgment of the significant contribution a small number of League Members contribute towards WADL meeting its objectives
- honoraria payments are not regular, expected or linked to any direct time, activity or an individual's performance

<sup>7</sup> *Scott v Federal Commissioner of Taxation* [1966] HCA 48 (*Scott*); *Hayes; Federal Coke Company Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1977] FCA 29.

<sup>8</sup> *Squatting Investment Co Ltd v Commissioner of Taxation* [1953] HCA 13.

<sup>9</sup> *Scott*.

<sup>10</sup> [1980] FCA 74.

- the maximum amount WADL pays to any individual League Member to adjudicate or present at WADL events is \$2,880 per annum, and
- the maximum amount WADL pays to any individual League Member as an honoraria payment is \$3,000 per annum.

32. These factors when considered together lead to the conclusion that the amounts received by League Members to adjudicate or present at debating events or as an honoraria payment are not ordinary income under subsection 6-5(1).

### **Statutory income**

33. Section 6-10 provides that your assessable income includes statutory income amounts that are not ordinary income but are included as assessable income by another provision.

34. These amounts are called statutory income. A list of the statutory income provisions can be found in section 10-5. The most relevant provision to consider for the League Members is the potential operation of section 15-2.

35. 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 ...

36. 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).

37. League Members covered by this Ruling are not considered to be employees of WADL or any affiliated member associations. 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.

38. As the adjudicator, presenter and honoraria payments are neither ordinary nor statutory income, they are not assessable income of the League Members who receive them.

### **General deductions**

39. As the payments received by League Members are not assessable income, all losses and outgoings that are incurred in connection with these activities are not allowable as deductions under section 8-1, nor will a deduction be allowable under any other provision of the ITAA 1997.



**References**

- Previous draft:*  
Not previously issued as a draft
- Related Rulings/Determinations:*  
TR 2006/10
- Legislative references:*
- TAA 1953
  - 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)
- Case references:*
- Commissioner of Taxation (Cth) v Dixon [1952] HCA 65; (1952) 86 CLR 540; [1953] ALR 17; 10 ATD 82; 26 ALJ 505
  - Commissioner of Taxation of the Commonwealth of Australia v Rowe, Anthony John Poulston [1995] FCA 834;
  - 95 ATC 4691; 131 ALR 622; 31 ATR 392; 60 FCR 99
  - Federal Coke Company Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia [1977] FCA 29; 77 ATC 4255; 7 ATR 519; 15 ALR 449; 34 FLR 375
  - GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth) [1990] HCA 25; (1990) 170 CLR 124; 64 ALJR 392; 90 ATC 4413; (1990) 21 ATR 1
  - Hayes v Commissioner of Taxation (Cth) [1956] HCA 21; (1956) 96 CLR 47; 11 ATD 68; 30 ALJ 96
  - Scott v Federal Commissioner of Taxation [1966] HCA 48; 117 CLR 514; 40 ALJR 205; [1967] ALR 561; 14 ATD 286
  - Squatting Investment Co Ltd v Commissioner of Taxation [1953] HCA 13; (1953) 86 CLR 570; [1953] ALR 366; 26 ALR 658; 10 ATD 126
  - The Commissioner of Taxation of the Commonwealth of Australia v Harris, G.O. [1980] FCA 74; (1980) 30 ALR 10

## ATO references

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