


CR 2002/20 - Income tax: assessable income: soccer referees: Victorian Soccer Federation referees

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 This ruling contains references to repealed provisions, some of which may have been rewritten. The ruling still has effect. Paragraph 32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.

 This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*



Class Ruling

Income tax: assessable income: soccer referees: Victorian Soccer Federation referees

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Preamble

*The number, subject heading, and the **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVAAA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are sections 6-5 and 8-1 of the *Income Tax Assessment Act 1997* ('ITAA 1997') and subsections 26(e) and 26(eaa) of the *Income Tax Assessment Act 1936* ('ITAA 1936')

Class of persons

3. The class of persons to whom this Ruling applies are Victorian Soccer Federation ('VSF') referees officiating in a league administered by the VSF. The class of persons does not include referees who officiate in national league competitions as well as VSF competitions.

Qualifications

4. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement described below at paragraphs 9 to

15 is carried out in accordance with the details of the arrangement provided in this Ruling.

6. If the arrangement described in this Ruling is materially different from the arrangement that is actually carried out:

- (a) this Ruling has no binding effect on the Commissioner because the arrangement entered into is not the arrangement on which the Commissioner has ruled; and
- (b) this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies to years commencing both before and after the date of issue. However, 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 (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the application for the class ruling dated 27 February 2002.¹ This document or relevant parts of it forms part of and are to be read with this description.

¹ The VSF requested a Class Ruling setting out the tax consequences for the class of referees identified. Ordinarily, the tax consequences would need to be considered

10. The VSF makes payments of money to individuals officiating as referees in the following Victorian soccer leagues:

- Premier League;
- State League – Division One;
- State League – Division Two;
- State League – Division Three;
- Provisional League;
- Women's – Premier League;
- Women's – Other Divisions;
- Thirds/Veterans Leagues;
- Junior – Under 18's;
- Junior – Under 16's;
- Junior – Under 15's;
- Junior – Under 14's;
- Junior – Under 13's;
- Junior – Under 12's;
- Junior – Under 11's;

11. Should the VSF establish further leagues below that of the Premier League, those further leagues are included within the arrangement identified in this Ruling.

12. Referees are paid for each match they officiate. The amount paid varies from league to league and according to whether the referee is a senior referee, assistant referee or under 21 referee.

13. Referees do not always officiate in the same league every week.

14. Referees are required to incur expenditure such as uniforms, training gear, travel, registration fees and the cost of a medical certificate. The money received for officiating does not typically cover the expenses incurred.

15. The VSF contends that the primary motivation for referees' involvement in refereeing is personal pleasure from a hobby rather than making profit from the activity.

on a taxpayer by taxpayer basis. However, the varying circumstances are considered sufficiently confined to enable a Class Ruling to be issued to the class of persons identified.

Ruling

16. Match payments for officiating VSF competitions are not assessable income.

17. Losses and outgoings incurred in deriving the match payments cannot be deducted from assessable income.

Explanations

18. A payment or other benefit received by a referee is assessable income if it is:

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

Ordinary Income

19. Under subsection 6-5(1) of the ITAA 1997 an amount is assessable income if it is income according to ordinary concepts (ordinary income).

20. 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.

21. 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.

22. Where a referee'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.

23. Participation in activities generating pastime or hobby receipts is a social or personal pursuit of a non-commercial nature. Pastime 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.

24. The sporting activities of VSF referees in the leagues named in paragraph 10 of this Ruling are considered to constitute a pastime or hobby and therefore, the match payments received from the pursuit of that pastime or hobby are not ordinary income.

25. Their participation in refereeing activities is a social or personal pursuit of a non-commercial nature. The Commissioner accepts the VSF's advice that referees are motivated because of their personal enjoyment in participating in the sport.

26. In forming the opinion that the VSF referees who comprise the class of persons to whom this Ruling applies are engaged in a pastime or hobby, we have taken into account the number of games that they officiate, the seniority of the soccer leagues, the non-commercial motivation and the quantum of the fees that referees can receive.

Provisions relating to statutory income

27. Section 6-10 of the ITAA 1997 includes in assessable income amounts that are not ordinary income; these amounts are statutory income.

28. The currently relevant two provisions of the ITAA 1936 are:

Subsection 26(e), which provides that the assessable income shall include ' . . . the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in

relation directly or indirectly to, any employment of or services rendered . . .’;

Subsection 26(eaa), which provides that the assessable income shall include ‘ . . . a benefit that, but for section 22 of the *Fringe Benefits Tax Assessment Act 1986*, would be an expense payment fringe benefit within the meaning of that Act – the amount of the reimbursement referred to in that section.’

The Commissioner considers that subsection 26(e) and 26(eaa) will not apply to match payments.

General Deductions

29. As the fees received by the referees are not assessable income, all losses and outgoings that are incurred in respect of deriving the fees are not allowed as a deduction under section 8-1 or any other provision of the ITAA 1997.

Other Comment

30. If a referee who officiates in the VSF leagues also officiates in more senior leagues than those administered by the VSF, that referee's activities may have ceased to be that of a hobby or pastime.

Pay as you go (PAYG) withholding

31. As ruled above, match payments paid to a referee who is engaged in a hobby or pastime are not assessable income. The payments are not a payment for work and services and therefore the PAYG withholding provisions of Subdivision 12-B of Schedule 1 of the *Taxation Administration Act 1953* do not apply. Tax should not be withheld from the match payment of referees who are in the class of persons to whom this Ruling applies.

Detailed contents list

32. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation
10 April 2002

Previous Ruling:

Not previously released in draft form

- sportspeople

*Related Rulings/Determinations:*CR 2001/1; TR 97/16; TR 92/20;
TR 92/1*Legislative references:*

- ITAA 1936 26(e)
- ITAA 1936 26(eaa)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- FBTAA 1986 22
- TAA 1953 Sch 1 Subdiv 12-B
- Copyright Act 1968

Subject references:

- allowances
 - assessable income
 - hobby v business
 - sport
 - sporting organisations
-

ATO References

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