

CR 2003/24 - Income tax: assessable income: basketball referees: Western Australian Basketball Federation Inc. receipts

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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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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: basketball referees: Western Australian Basketball Federation Inc. receipts

Contents	Para
What this Class Ruling is about	1
Date of effect	9
Arrangement	10
Ruling	18
Explanations	20
Detailed contents list	38

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 applied with in this Ruling are sections 6-5, 6-10 and 8-1 of the Income Tax Assessment Act 1997 (‘ITAA 1997’) and paragraph 26(e) of the Income Tax Assessment Act 1936 (‘ITAA 1936’).

Class of persons

3. The class of persons to which this Ruling applies are basketball referees who referee basketball matches conducted by the Western Australian Basketball Federation (Inc) (WABF) and its affiliated associations and receive payments for refereeing matches in any of the Western Australian Basketball League competitions listed below:

- Division 1;
- Under 23;
- Under 20;

- Under 18;
- Under 16;
- Under 14;
- Under 13;
- Inter School Competitions;
- Domestic Competitions;
- Seniors; and
- Juniors.

Should the WABF establish further leagues below that of State Basketball League, this Ruling will apply to referees officiating in those matches.

4. Referees who also officiate in the State and National Basketball League are not included in the class of persons to whom this ruling applies.

Qualifications

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

6. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described below at paragraphs 10 to 17 in this Ruling.

7. 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

9. 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

10. The arrangement that is the subject of the Ruling is described below.

11. Referees receive payments from the WABF and affiliated associations for officiating in the matches outlined in paragraph 3.

12. All competitions comprise male and female divisions.

13. Referees are paid for each match they officiate. The amount varies from competition to competition and according to the accreditation level of the referee.

14. Typically, referees of junior matches are paid between \$7 and \$12 per match. Referees of more senior matches are paid in the vicinity of \$15 to \$18 per match. It is possible due to the number of games being played that a referee may referee 3 matches on a weekend.

15. Referees do not always officiate in the same competition every week.

16. Referees are required to incur expenditure such as uniforms, training gear, travel and registration fees. The payments received for officiating does not typically cover the expenses incurred.

17. Referees are paid in cash typically the week following the matches they have officiated in.

Ruling

18. The payments received by referees of matches conducted by the Western Australian Basketball Federation and its affiliated associations are not assessable income.

19. Losses and outgoings incurred deriving the match payments cannot be claimed as a deduction.

Explanations

20. 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

21. Under subsection 6-5(1) of the ITAA 1997 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. Furthermore, where a person'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.

25. 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.

Match Payments

26. The sporting activities of WABF referees are considered to constitute a pastime or hobby and therefore, the match payments received from the pursuit of that pastime or hobby are not assessable income.

27. The match payments are not intended to, nor do they usually, cover expenses. The purpose of the payment is to encourage members of the community to participate in local sporting activities by subsidising that participation.

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

29. In forming the opinion that the WABF 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 basketball leagues, the links with the community of those leagues, particularly the social benefits of participation and the quantum of the fees that they can receive.

Provisions relating to statutory income

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

31. The relevant provision of the ITAA 1936 is paragraph 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...'.

32. The main issue to consider with respect to paragraph 26(e) is whether the payment is given or '*granted to him in respect of ... any employment of or services rendered...*'. Whilst WABF referees are not considered employees, paragraph 26(e) also includes in assessable income those allowances etc, which are paid in respect of services rendered.

33. The referee match payments to WABF referees are considered to be 'receipts incidental to a pastime' (refer paragraphs 26 to 29). As such, the match payments are not assessable under paragraph 26(e) because the referees are not considered to be employees, nor are they 'rendering services'.

34. The Commissioner considers that paragraph 26(e) will not apply to referee match payments.

General Deductions

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

Referees who officiate in other leagues

36. Where referees who referee matches conducted by the WABF also officiate in more senior leagues than those outlined in this ruling those referees' activities may have ceased to be that of a hobby or pastime. A more detailed analysis of the circumstances of those referees is required. Referees in this situation should discuss their circumstances with their taxation adviser or the Australian Taxation Office.

Pay As You Go (PAYG) withholding

37. 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 payments to referees who are in the class of persons to whom this Ruling applies.

Detailed contents list

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

	Paragraph
What this Class Ruling is about	1
Tax law(s)	2
Class of persons	3
Qualifications	5
Date of effect	9
Arrangement	10
Ruling	18
Explanations	20
Ordinary Income	21
<i>Match Payments</i>	26
Provisions relating to statutory income	30
Referees who officiate in other leagues	36
Pay As You Go (PAYG) withholding	37
Detailed contents list	38

Commissioner of Taxation

19 March 2003

Previous Ruling:

- sport

Not previously released in draft form

Legislative references:

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR97/16;
TR 1999/1; CR 2001/1

- TAA 1953 Part IVAAA
- TAA 1953 12-B sch 1
- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5 (1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- Copyright Act 1968

Subject references:

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

ATO References

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