


# ***CR 2003/72 - Income tax: assessable income: school sport officials: Association of Independent Schools of Victoria Incorporated***

 This cover sheet is provided for information only. It does not form part of *CR 2003/72 - Income tax: assessable income: school sport officials: Association of Independent Schools of Victoria Incorporated*

 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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: school sport officials: Association of Independent Schools of Victoria Incorporated

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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

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' 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, 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 whom this Ruling applies are persons who are utilised as referees, umpires or other sporting officials by:

- individual schools and groups of schools which are registered members of the Association of Independent Schools of Victoria Incorporated (AISV);
- individual schools or groups of schools which are registered members of the AISV but operate through associations controlled by the schools for the purpose of managing sports activities; and
- no other organisations.

In this Ruling, persons acting in the capacity of an ‘umpire, referee or other sporting official’ may be referred to as ‘school sport officials’.

4. The class of persons does not include any person who:
  - is either an employee of, or has a contract with, an individual school, group of schools or association referred to in paragraph 3; and
  - whose duties would ordinarily include:
    - managing school physical education or sporting programs; or
    - coaching a school’s sporting team.

## 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 24 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

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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.

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## Arrangement

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

### Individual schools

11. Individual schools organise sports activities and utilise school sport officials to officiate in sports activities.

### Groups of schools

12. Groups of schools organise sports activities involving two or more schools. School sport officials are often utilised to officiate over these sports activities.

13. The 'host' or 'home' school for sports carnivals and the like makes payments to the school sport officials.

### Associations of schools

14. Associations of schools have established entities separate to the competing schools, but controlled by the schools, for the purpose of organising sports activities between member schools of the association. School sport officials who are not employees or under contract to the associations are often utilised by the associations to officiate in the sports activities.

## **Other attributes**

15. 'Sports activity' includes activities such as physical education and sporting programs, competitions, events, games, and sports carnivals.

16. The individual schools, groups of schools and associations utilise school sport officials on an 'as needed' basis.

17. No contract exists between the individual school, groups of schools or associations and the school sport official.

18. The school sport officials are required to incur expenditure for their uniforms and equipment (whistles, wrist bands and so on), travel to and from sports activities and maintaining their qualifications (registration fees, update courses and so on).

19. A school sport official would usually spend 4-5 hours officiating on a particular day and would officiate on no more than 30 days in any particular year.

20. Payments to school sport officials are on a per game or per event basis or at an hourly rate for sports carnivals and the like.

21. School sport officials are paid by cheque or cash or in some cases by Electronic Funds Transfer at Point of Sale (EFTPOS).

22. Current payments are such that no school sport official would receive more than \$1200 in any particular year.

23. The school sport officials do not receive any allowances or benefits other than the payment for the sports activities.

24. The payments received are not intended to, nor do they usually, cover expenses. The purpose of the payment is to encourage members of the community to officiate in local school sporting activities by subsidising the expenses associated with their participation. Individual school sport officials contend the primary motivation for their involvement in schools' sports is, 'personal pleasure from a hobby together with a desire to support the provision of opportunities for young people to participate in school sport and for 'the love of the game'.

## **Ruling**

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25. Payments made to school sport officials by individual schools or groups of schools that are registered members of the AISV, or associations controlled by schools that are registered members of the AISV, are not assessable income.

26. Losses and outgoings incurred in deriving the payments cannot be claimed as a deduction.

## **Explanation**

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27. A payment received by a school sport official 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**

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

29. 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 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.

30. 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.

31. 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.

32. 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.

## **Payments**

33. The sports activities of the school sport officials are considered to constitute a pastime or hobby and therefore the payments received from the pursuit of that pastime or hobby are not assessable income.

34. School sport officials' participation in sports activities is a social or personal pursuit of a non commercial nature. Individual school sport officials have stated that their primary motivation for involvement in the sports activities is 'personal pleasure from a hobby together with a desire to support the provision of opportunities for young people to participate in school sport and for 'the love of the game'.

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

36. In forming the opinion that the school sport officials are engaged in a pastime or hobby, consideration has been given to the frequency of their officiating engagements, their non commercial motivation, and the quantum of the fees received per year.

## **Provisions relating to statutory income**

37. Section 6-10 of the ITAA 1997 includes in assessable income amounts that are not ordinary income.

38. 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...’*

### **Payments**

39. 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...’. While the school sport officials are not considered ‘employees’, paragraph 26(e) also includes in assessable income, allowances etc, which are paid in respect of ‘services rendered’.

40. The payments made to school sport officials are considered to be ‘receipts incidental to a pastime’ (refer to paragraphs 33 and 34). As such, the payments are not assessable under paragraph 26(e) because the school sport officials are not considered to be employees, nor are they rendering services.

### **General Deductions**

41. As the fees received by the school sport officials 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 Employment**

42. Where an individual would be a ‘School Sports Official’, but for being employed by another organisation (see paragraph 3), their activities may cease to be considered that of a hobby or pastime. In which case, a more detailed analysis of the circumstances of those individuals may be required. Individuals in this situation should discuss their circumstances with their taxation adviser or the Australian Taxation Office

### **Pay as you go (PAYG) withholding**

43. As ruled above, payments paid to schools sport officials engaged in a hobby or pastime are not assessable income. The payments are not a payment for work or 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 payments of school sport officials who are in the class of persons to whom this Ruling applies.

## **Detailed contents list**

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

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### **Commissioner of Taxation**

27 August 2003

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*Previous draft:*

Not previously released in draft form

*Related Rulings/Determinations:*

CR 2001/1; TR 97/16; TR 92/20;  
TR 92/1

*Subject references:*

- assessable income
- hobby v. business
- sports
- sportspeople

- 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

*Legislative references:*

- TAA 1953 Part IVAAA

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*ATO references*

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