


CR 2003/76 - Income tax: Membership subscriptions paid to Superannuated Commonwealth Officers' Association Inc.

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Class Ruling

Income tax: Membership subscriptions paid to Superannuated Commonwealth Officers' Association Inc.

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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 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 section 8-1 and section 25-55 of the *Income Tax Assessment Act 1997* ('ITAA 1997').

Class of persons

3. The class of persons to which this Ruling applies is members of the Superannuated Commonwealth Officers Association Inc. ('SCOA') who are in receipt of a Commonwealth superannuation pension and/or compensation payments from Comcare.

Qualifications

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

5. 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 9 to 19 in this Ruling.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:
- (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 - (b) this Ruling may be withdrawn or modified.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 of income commencing both before and after its 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:

- Application for Class Ruling contained in correspondence to the Australian Taxation Office dated 8 May 2003;
- Information from SCOA's internet website;

- Recent editions of SCOA's newsletter 'SuperTime';
 - SCOA's submission to the Senate Select Committee on Superannuation and Financial Services dated January 2001; and
 - Further information provided by the applicant.
10. SCOA is a non-political, not for profit association financed entirely by its own members.
11. It represents the interests of:
- Retired civilian Australian Federal Agency and Territory Government employees and their families.
These members include:
 - recipients of a superannuation pension or lump sum from any superannuation scheme or provident account arising from employment with a Commonwealth Department, statutory authority, or any other agency or business enterprise partly or fully owned by the Commonwealth;
 - persons who have retired from a Territory government service; and
 - partners of persons who are eligible for membership of SCOA (not necessarily in receipt of a Commonwealth pension).
 - People employed in the public service who will receive a Commonwealth superannuation benefit on retirement; and
 - Former employees who have deferred (preserved) their pension entitlement.
12. The stated objectives of SCOA are to:
- improve and safeguard the retirement interests of its members and constituency;
 - protect the value of members' superannuation entitlements and related benefits;
 - secure fair and equitable treatment compared to other retirees and pensioners; and

- provide information to members on issues such as superannuation; taxation; age and other social security and veterans' affairs benefits; health and aged care; concessions; compensation; employment of older workers; and general investment matters.

13. SCOA has a National Office in Canberra and branches in each state and the ACT. It has approximately 21,000 members, a large majority of which are in receipt of a Commonwealth superannuation pension. Most of these superannuants hold joint membership with their spouse or partners. Branches set their own membership fees which currently range from \$15 to \$20 per annum for ordinary membership, \$20 to \$30 for joint membership and \$10 to \$15 for a contributor's widow/er.

14. The main focus of SCOA, particularly in recent years, is the maintaining of the value of members' superannuation pension entitlements. To this end SCOA has been seeking a change to the method of indexation applied to the pensions, that is, be indexed according to the higher of a wage based index or the Consumer Price Index (CPI).

15. The indexation campaign has included lobbying of the government, major submissions to inquiries of the Senate Select Committee on Superannuation and Financial Services in 2001 and the Senate Select Committee on Superannuation in 2002 and appearance as a witness at both inquiries. The 2001 inquiry, which was initiated by SCOA, led to Commonwealth pensions being CPI indexed bi-annually instead of annually. The campaign is currently ongoing and adoption of the SCOA submissions could be expected to lead to a further increase in the relevant pensions.

16. In addition to the advocacy role SCOA provides support and assistance to members in ensuring their current and past pension entitlements from Comsuper are correct. This assistance extends to members who are also entitled to a part age pension from Centrelink by ensuring that the information provided by Comsuper to Centrelink, on which the rate of age pension is determined, is correct and therefore that the appropriate rate of age pension is paid.

17. SCOA also provides assistance to those members who, in addition to superannuation entitlements, are in receipt of compensation payments from Comcare. Meetings are regularly held between representatives of SCOA and Comcare with a view to ensuring that compensation recipients receive their correct entitlements. Assistance by SCOA has resulted in a number of its members receiving increases to their fortnightly payments together with back payments where appropriate.

18. A quarterly newsletter 'SuperTime' is produced by SCOA which provides information to members on a number of matters of interest. In particular it provides updates on superannuation issues such as the association's indexation campaign and legislative proposals or changes. It also provides information on taxation, investments, age and social security benefits but this is essentially restricted to general information and advice on where or how more specific information may be obtained.

19. SCOA also provides advice or information personally to members on these issues where possible or directs them where it may be obtained. Regular branch meetings are held which provide a forum for information sharing etc and at which representatives from various areas of interest are at times invited to speak.

Ruling

20. The annual membership subscriptions paid by members of SCOA who are in receipt of a Commonwealth superannuation pension and/or compensation payments from Comcare (relevant members) are deductible under section 8-1 of the ITAA 1997.

21. Where a relevant member of SCOA holds single person membership, the whole membership subscription is allowed as a deduction.

22. Where a subscription is paid to provide joint membership and both members are relevant members, the subscription is to be equally apportioned with each relevant member entitled to claim a deduction for his or her portion.

23. Where a relevant member of SCOA pays a subscription to provide joint membership for himself or herself and another person (spouse, partner) who is not a relevant member, the relevant member is entitled to a deduction of an amount equal to the single membership subscription for his or her Branch. The balance of the joint membership fee is not deductible by the relevant member or the other person.

Explanation

Section 8-1 of the ITAA 1997

24. Section 8-1 of the ITAA 1997 allows a deduction for all losses and outgoings to the extent to which they are incurred in gaining or producing assessable income except where the outgoings are of a capital, private or domestic nature, or relate to the earning of exempt income.

25. To be deductible under section 8-1 of the ITAA 1997 there needs to be a sufficient connection between the expenditure and the production of assessable income so that the outgoing is incidental and relevant to the gaining of assessable income (*Ronpibon Tin NL v. FC of T* (1949) 78 CLR 47; (1949) 8 ATD 431).

26. In considering a claim for a deduction for subscriptions paid to a representative association regard must be given to the objects and activities of that association. If the activities of a pensioner or retiree association are incidental and relevant to the gaining of the member's assessable income, subscriptions paid to these associations are deductible under section 8-1 of the ITAA 1997 (see paragraph 55 of Taxation Ruling TR 2000/7).

27. The objects and activities of SCOA primarily involve maintaining and protecting the members' retirement interests and in particular their superannuation entitlements. It provides representation and support for members in ensuring that their past and current entitlements are correct and undertakes a major advocacy role in respect of their future entitlements. Similarly SCOA provides representation and support for members who are in receipt of compensation payments and age pensions to ensure their correct entitlements. All these receipts are assessable income.

28. SCOA also provides information to members on issues such as superannuation, compensation, taxation, social security benefits and general investment matters.

29. It is considered that for members in receipt of Commonwealth superannuation and/or compensation payments from Comcare, the activities of SCOA are incidental and relevant to the gaining of their assessable income and therefore the membership subscription costs are deductible under section 8-1 of the ITAA 1997.

Apportioning the Membership Fee

30. For the purposes of claiming a deduction the subscription fee for single membership may be claimed in full. The outgoing is incurred wholly for the purpose of obtaining membership of SCOA which as discussed in paragraph 29 of this Ruling is incidental and relevant to gaining of assessable income. There is no requirement to apportion the subscription.

31. The words 'to the extent to which' in section 8-1 of the ITAA 1997 signify that an expense may be apportioned if it is only partly incurred to produce assessable income. In *Ronpibon Tin v. FC of T* (1949) 78 CLR 47; (1949) 8 ATD 431, and *Fletcher & Others v. FC of T* 91 ATC 4950; (1991) 22 ATR 613, the High Court recognised that there are at least two kinds of expenditure that require apportionment. These were generally: those kinds that are capable of dissection; and those that cannot be dissected but should be apportioned on the basis that they serve more than one object indifferently. In the latter kind, while the High Court recognised that there can be no precise arithmetical division in such cases, it said there must be some fair and reasonable division on the facts of each case.

32. In the case where a member pays or incurs a fee to provide joint membership for two persons, the fee serves two purposes indifferently, that is, the provision of membership for himself or herself and membership for another person (spouse or partner). It is therefore necessary to make some fair and reasonable division between that part of the expenditure that relates to the gaining of his or her assessable income and that which does not.

33. In *AAT Case 4157* (1988) 19 ATR 3292; *Case V39 88* ATC 335, the Administrative Appeals Tribunal considered the apportionment of expenses incurred by a taxpayer on accommodation for himself and his wife during an overseas trip. The Tribunal took the view that, due to the small increase in the accommodation charges as a result of the taxpayer being joined by his wife, the costs of the wife's accommodation were more accurately reflected by the additional costs incurred rather than half the total.

34. In this case, having regard to the relatively small increase in fees to obtain joint membership rather than single membership and SCOA's primary objects, activities and focus, it is considered fair and reasonable that, where only the member who incurs the subscription fee is in receipt of a Commonwealth superannuation pension and/or Comcare payments, he or she be entitled to claim a deduction equivalent to the single membership for his or her Branch. The cost of providing membership for the other person is therefore considered to be more accurately reflected by the amount paid in excess of that required for single membership. The part of the fee considered attributable to membership of the other person therefore cannot be

claimed by the superannuant as a deduction as it does not relate to the gaining of his or her assessable income. The other person cannot claim a deduction for that amount as the expense was not incurred by them.

35. Where a joint membership subscription is paid and both members covered by that joint membership are recipients of a Commonwealth superannuation pension and/or Comcare payments it is accepted that the subscription has been paid jointly by those members. As such the joint subscription fee is to be apportioned equally and both are entitled to claim their share of the membership fee as a deduction.

Members of SCOA who are not in receipt of a superannuation pension and/or Comcare payments

36. Members of SCOA who have incurred membership fees but are not in receipt of a superannuation pension and/or Comcare payments are not covered by this ruling and cannot rely upon it to support a deduction for membership fees. Deductibility of their subscriptions will need to be determined having regard to their individual circumstances. Members in this situation should therefore seek appropriate advice from their taxation adviser or the Australian Taxation Office.

Section 25-55 of the ITAA 1997

37. Where a payment to an association cannot satisfy the requirements of section 8-1, a deduction is allowable to the person (up to an amount of \$42 in an income year for payments in respect of each association to which the person belongs) under section 25-55 of the ITAA 1997 if the payment is made for membership of a trade, business or professional association.

38. SCOA membership is not considered to be in respect of a trade, business or profession. It is essentially an association of retired persons.

39. The membership subscriptions paid to SCOA therefore cannot be claimed as a deduction under section 25-55 of the ITAA 1997. For further explanation see paragraphs 57 to 59 of TR 2000/7.

Detailed contents list

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

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Commissioner of Taxation

3 September 2003

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 95/33; TR 97/16; TR 2000/7

Subject references:

- allowable deductions
- association and membership expenses

Legislative references:

- ITAA 1997 8-1
- ITAA 1997 25-55
- TAA 1953 Part IVAAA
- Copyright Act 1968

Case references:

- Ronpibon Tin NL v. FC of T (1949)
78 CLR 47; (1949) 8 ATD 431
- Fletcher & Ors v. FC of T 91 ATC
4950; (1991) 22 ATR 613
- AAT Case 4157 (1988) 19 ATR
3292; Case V39 88 ATC 335

ATO references

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