

CR 2004/60 - Income tax: assessable income: referee, umpire and scorer match fees: University of Southern Queensland Student Guild

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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 This ruling contains references to repealed provisions, some of which may have been rewritten.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32 in TR 2006/10 provides further guidance on the status and binding effect of public rulings where the law has been repealed or repealed and rewritten. The legislative references at the end of the ruling indicate the repealed provisions and, where applicable, the rewritten provisions.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: referee, umpire and scorer match fees: University of Southern Queensland Student Guild

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Preamble

*The number, subject heading, **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 law(s) dealt with in this application 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 is sports referees, umpires and scorers who receive payments for officiating at sporting matches administered by the University of Southern Queensland Student Guild (USQSG).

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 actually carried out is carried out in accordance with the arrangement described in paragraphs 9 to 21.

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

- 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
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 July 2003. However, this 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 following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Class Rulings dated 2 April 2004.
- Tax Office record of telephone conversations between a representative of the applicant and a taxation officer.

Lunch time and night matches

10. The USQSG organises and runs a lunch time and night time sporting program for the benefit of its student members.

11. USQSG requires referees, umpires and scorers to officiate at all games. During the 1st semester of 2004, the USQSG requires:

- Monday and Tuesday night netball – approximately 7 umpires and 3 scorers each night
- Wednesday lunch-time sport – approximately 4 referees
- Friday afternoon touch football – approximately 3 referees

12. While the number of games played and the sports offered may vary over time, depending on the sporting preferences of the student members, the USQSG does not expect any significant changes to the sporting program that it runs.

13. To encourage participation in these competitions, the USQSG provide referees, umpires and scorers a match fee. Match fees range between \$5 and \$20 depending on the sport played. The maximum amount that a student can expect to receive is \$1000 per annum from these match fees.

14. The referees, umpires and scorers do not receive any allowances or benefits other than the match fees referred to in paragraph 13.

15. Referees, umpires and scorers are expected to provide their own match uniforms, running shoes, whistles, flags, coats etc.

16. The referees, umpires and scorers are current and former students of the university. The match fees are not intended to, nor do they usually, cover expenses. The purpose of the payments is to encourage current and former students to participate in university sporting activities by subsidising the costs associated with participation. Umpiring or scoring provides the opportunity to be involved in the game, achieve a greater fitness level and to meet friends on a regular basis, as well as maintaining contacts within the university.

Northern University Games

17. During the period 4 July to 8 July 2004, the USQSG will be hosting and administering the Northern University Games (the Games). While the Games are an annual event, the responsibility for hosting and administering the Games is rotated among the competing universities. USQSG last hosted the Games in 1991 and 1997. USQSG expects that it will be a further 7 or 8 years before it will have another opportunity to host the Games.

18. For the period of the Games, the USQSG will require sufficient referees, umpires and scorers to cover the 14 sports which are part of the Games. These referees, umpires and scorers are current students of the competing universities and family and friends of the students involved in the games.

19. The referees, umpires and scorers will receive from \$10 to \$80 per game depending on the sport. The maximum any umpire would expect to receive through the games is \$800.

20. The referees, umpires and scorers will not receive any allowances or benefits other than the match fees referred to in paragraph 19.

21. The referees, umpires and scorers may be provided with a game shirt to be used for the period of the games. However they will be expected to provide their own running shoes, whistles, flags, coats etc.

Ruling

22. The match fees paid to the referees, umpires and scorers officials described in paragraph 3 of this ruling who officiate at the lunch time and night time matches described in paragraphs 10 to 16 are not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

23. The match fees paid to referees, umpires and scorers described in paragraph 3 of this ruling who officiate at the Northern University Games described in paragraphs 17 to 21 of this ruling are not assessable income under either section 6-5 or section 6-10 of the ITAA 1997.

24. Losses and outgoings incurred deriving the match fees described in paragraphs 13 and 19 of this ruling, cannot be claimed as a deduction under section 8-1 of the ITAA 1997 or any other provision.

Explanation

25. A payment or other benefit received by a taxpayer is assessable income if it is:

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

Ordinary Income

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

27. 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.

28. 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.

29. Furthermore, 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 are not assessable income, nor are the expenses allowable deductions.

30. 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.

31. Participation in the lunch time and night time sporting activities of the USQSG as a referee, umpire or scorer is considered to constitute a pastime or hobby and therefore, the match fees received from the pursuit of that pastime or hobby are not assessable income.

32. The match fees are not intended to, nor do they usually, cover expenses. The purpose of the payment is to encourage members of the USQSG to participate in university sporting activities by subsidising that participation.

33. The Northern University Games are hosted by USQSG every 7 or 8 years. Participation in the Games as a referee, umpire or scorer is considered to be a further incident of their pastime or hobby.

34. In forming the opinion that the referees, umpires or scorers 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 at which they officiate, the links with the students of the University of Southern Queensland of those sports, the social benefits of participation and the quantum of the fees that they can receive.

Statutory Income

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

36. Paragraph 26(e) of the ITAA 1936 may have application to the circumstances here. This provision 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 . . .

37. The main issue to consider with respect to paragraph 26(e) of the ITAA 1936 is whether the payment is '*... given or granted to him in respect of ... any employment of or services rendered ...*'. Whilst the referees, umpires or scorers are not considered 'employees', paragraph 26(e) of the ITAA 1936 also includes in assessable income those allowances etc. which are paid in respect of 'services rendered'.

38. The match fees of the referees, umpires and scorers are considered to be 'receipts incidental to a pastime' (refer paragraphs 31 and 33). As such, the match fees are not assessable under paragraph 26(e) of the ITAA 1936 because the referees, umpires and scorers are not considered to be employees, nor are they 'rendering services'.

General Deductions

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

Referees, umpires and scorers who officiate in other games

40. Where referees, umpires and scorers who officiate in the lunch time and night sporting events and/or the Games also officiate in the sporting events of other organisations, those official's activities may have ceased to be that of a hobby or pastime. A more detailed analysis of the circumstances of those referees, umpires and scorers may be required. Referees, umpires and scorers in this situation should discuss their circumstances with their taxation adviser or the Australian Taxation Office.

Pay As You Go (PAYG) withholding

41. As explained above, match payments made to an umpire who is engaged in a hobby or pastime are not assessable income. The payments are not regarded as withholding payments under Division 12 in Schedule 1 to the *Taxation Administration Act 1953*. An entity making match payments to umpires who are in the class of persons to which this Ruling applies will not be required to withhold amounts from these payments.

Detailed contents list

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Commissioner of Taxation

16 June 2004

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/90;
TR 97/16

Legislative references:

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

NO: 2004/7428

ISSN: 1445-2014