CR 2007/36 - Income tax: Medal Incentive Funding payments provided by the Australian Olympic Committee

Class Ruling

Income tax: Medal Incentive Funding payments provided by the Australian Olympic Committee

Contents Para

This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 6-10 of the ITAA 1997;
- section 8-1 of the ITAA 1997; and
- Division 12 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies are athletes who are not carrying on a business as a sportsperson and are in receipt of payments provided by the Australian Olympic Committee (AOC) under the Medal Incentive Funding (MIF) program.

Qualifications

4. The Commissioner makes this Ruling on the proposed scheme identified in the Ruling.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 24 of this Ruling.

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

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

Date of effect

8. This Class Ruling applies for the income years ended 30 June 2005, 30 June 2006, 30 June 2007 and 30 June 2008. However, the Class Ruling continues to apply after this date to athletes receiving MIF payments, subject to there being no change to the scheme described in paragraphs 13 to 24 of this Ruling.

9. 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the TAA).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

13. The following athletes are considered for MIF payments under the AOC's Programs and Funding Guidelines.

Programs and Funding Guidelines for Sports on the Program for the 2008 Olympic Games in Beijing

- athletes who won medals at the 2004 Olympic Games; and
- athletes who win medals in 2005, 2006 and 2007 calendar years (including 4th placegetters in 2006 and 2007) at World Championships, or other major international events of a comparable standard, in events that are on the 2008 Olympic program (agreed in advance by the AOC as appropriate 'Benchmark Events').

Programs and Funding Guidelines for Sports on the Program for the 2010 Olympic Winter Games in Vancouver

- athletes who won medals at the 2006 Olympic Winter Games; and
- athletes who win medals in the periods from 1 April 2006 to 31 March 2007, 1 April 2007 to 31 March 2008, or 1 April 2008 to 31 March 2009, (including 4th placegetters in the periods 1 April 2007 to 31 March 2008, or 1 April 2008 to 31 March 2009) at World Championships, or other major international events of a comparable standard, in events that are on the 2010 Olympic Winter Games program (agreed in advance by the AOC as appropriate 'Benchmark Events').

14. MIF payments are made in the year immediately following the year in which the medal is won. The payments are in the following amounts.

2008 Australian Olympic Team preparation

Year of Payment ended 31 December	Gold	Silver	Bronze	4th
2005	$10,000	$7,500	$5,000	
2006	$10,000	$7,500	$5,000	
2007	$15,000	$10,000	$7,500	$5,000
2008	$15,000	$10,000	$7,500	$5,000

2010 Australian Olympic Winter Team preparation

Year of Payment ended 31 March	Gold	Silver	Bronze	4th
2007	$15,000	$10,000	$7,500	
2008	$15,000	$10,000	$7,500	
2009	$15,000	$10,000	$7,500	$5,000
2010	$15,000	$10,000	$7,500	$5,000

15. The purpose of the MIF payments is to help athletes gain selection to represent Australia at the 2008 Olympic Games in Beijing or 2010 Olympic Winter Games in Vancouver and win medals.

16. In order for the athletes to be considered for MIF payments, they must maintain appropriate training regimes with the intention of gaining national or Olympic selection in the year subsequent to winning a medal (or being a 4th placegetter). It is not necessary that the event for which they are training be the same as that in which the medal was won, provided it is in the same sport/discipline and on the program of the 2008 Olympic Games or 2010 Winter Olympic Games.

17. Athletes who won medals at the 2004 Olympic Games may be excused from maintaining an appropriate training regime and will carry their eligibility to be considered for MIF payments to 2006 or 2007, provided they actually gain and accept national selection in one of those years. A 2004 Olympic Games medallist may choose to take time out from appropriate training and defer payment until a subsequent year, provided they resume appropriate training and obtain national selection in that year. A similar arrangement applies to athletes who won medals at the 2006 Winter Olympic Games.

18. Athletes who win more than one medal in any year (including 4th placegetters where applicable) are considered for MIF payments in respect of their best result only. Multi-medal winners/4th placegetters do not receive multi-funding.

19. Members of medallist teams and other combinations (including 4th placegetters where applicable) are considered for the same MIF payments as individuals.

20. MIF is determined by the AOC at its sole and absolute discretion.

21. MIF is provided by one payment as soon as practicable after the commencement of the calendar year following the winning of a medal (or achieving a 4th place), or in the case of athletes who carry forward their consideration for MIF payments in respect of their 2004 Olympic Games or 2006 Winter Olympic Games result, when they actually gain and accept national selection in later years.

22. Athletes are not required to enter into any agreement. AOC Guidelines define the terms under which the AOC will consider an athlete's eligibility for funding. The AOC's standard letter to an athlete deemed eligible for MIF includes the following statements:

> The Medal Incentive Funding is one of a number of support Programs that is fully funded by the AOC…to assist athletes … in their preparation for the Olympic Games.
>
> As a recipient of Medal Incentive Funding, you have no duty or obligation to provide or supply any services to the AOC nor does the AOC regard this funding to you as a reward for service.

23. Athletes are bound by the AOC Anti-Doping By-Law. If an athlete commits an anti-doping violation, doping offence or breach of the By-Law the athlete may be required to repay any monies paid under the AOC funding programs.

24. Athletes do not generally receive more than one MIF payment a year unless they are an Olympic medallist and have deferred payment in respect of that year and win another medal in a later year.

Ruling

25. MIF payments provided by the AOC are not assessable income for the purposes of sections 6-5 or 6-10.

26. MIF payments provided by the AOC are not regarded as withholding payments under Division 12 of Schedule 1 to the TAA.

Commissioner of Taxation
9 May 2007

Appendix 1 – Explanation

This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.

27. A payment or other benefit received by a taxpayer is included in 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

28. Subsection 6-5(1) provides that an amount is included in your assessable income if it is income according to ordinary concepts.

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 by the ordinary concepts and usages of mankind except in so far as statute dictates otherwise;[1]
- whether the payment received is income depends upon a close examination of all relevant circumstances;[2] and
- whether the payment received is income is an objective test.[3]

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;[4]
- the quality or character of the payment in the hands of the recipient;[5]

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[1] *Scott v. FC of T* (1935) 35 SR (NSW) 215; (1935) 3 ATD 142 per Jordan CJ at SR 219; ATD 144.
[2] *The Squatting Investment Co Ltd v. FC of T* (1953) 86 CLR 570 at 627; (1953) 10 ATD 126 at 146.
[3] *Hayes v. FC of T* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73.
[4] *FC of T v. Harris* (1980) 42 FLR 36 at 40; 80 ATC 4238 at 4241; (1980) 10 ATR 869 at 872 and *Hayes v. FC of T* (1956) 96 CLR 47 at 54; (1956) 11 ATD 68 at 72.
[5] *FC of T v. Blake* 84 ATC 4661; (1984) 15 ATR 1006 – refer comments of Carter J (at ATC 4664; ATR 1010), *Scott v. FC of T* (1966) 117 CLR 514; (1966) 14 ATD 286 (at CLR 526; ATD 293) and *GP International Pipecoaters Pty Ltd v. FC of T* (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1 (at CLR 136; ATC 4419; ATR 6).

- the form of the receipt, whether it is received periodically or as a lump sum;[6] and
- the motive of the person making the payment. Motive however, is rarely decisive a mixture of motives may exist.[7]

31. When considering the first and last factors in paragraph 30 of this Ruling it is appropriate to look at the nature of the relationship between the athletes in receipt of the MIF payments and the AOC which makes the payments.

32. The AOC is responsible for the representation of Australia at the Olympic Games, including the Winter Olympic Games, and has certain objectives in relation to the 2008 Olympic Games and 2010 Winter Olympic Games. To this end, the AOC provides, amongst other things, direct funding to athletes (and coaches) under the MIF program.

33. Athletes in receipt of the MIF payments are required to maintain appropriate training regimes with the intention of gaining national or Olympic selection in the year subsequent to winning a medal or being a 4th placegetter. They are not required to enter into any agreement, however are bound by the AOC Anti Doping By-Law. The Commissioner does not consider that these factors are sufficient to amount to an employer/employee relationship between the AOC and the athlete.

Voluntary payments that are considered to be income

34. As the relationship is not one of employer/employee and there is no legal obligation on the part of the AOC to make MIF payments to specific athletes the nature of the voluntary payments needs to be considered. Paragraph 48 of Taxation Ruling TR 1999/17 states:

> Although there are no fixed criteria, the decisions of the courts show that voluntary payments, such as under a grant, made to a sportsperson are income where they are:
>
> (i) made under an agreement or arrangement to provide financial support in the form of periodical, regular or recurrent payments;
>
> (ii) received in circumstances where the sportsperson has an expectation of receiving the payment as part of periodical, regular or recurrent payments, and the sportsperson is able to rely on the payment for his or her regular expenditure; or
>
> (iii) part of periodic, regular or recurrent payments made in substitution of income.
>
> The quality or character of such voluntary payments, in the hands of the sportsperson, is assessable income.

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[6] *FC of T v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82 (at CLR 557; ATD 86).
[7] *Hayes v. FC of T* (1956) 96 CLR 47; (1956) 11 ATD 68 (at CLR 55; ATD 72-73).

35. Although athletes in receipt of MIF payments must meet some criteria (such as appropriate training regimes), there is no agreement of any type between the AOC and athletes.

36. MIF payments are normally a one-off payment based on an athlete's best result for the year. Athletes who win more than one medal (including 4th placegetters) in the same year do not receive additional or recurrent payments.

37. The standard letter issued by the AOC to athletes advising they are eligible to receive an MIF payment states that the purpose of the payment is to assist in their preparation for the Olympic Games. The amount of a one-off payment is set in the AOC's guidelines. MIF payments are not regular, periodic or expected. An athlete cannot rely on the receipt of an MIF payment. These factors lead to the conclusion that the MIF payments are not income according to ordinary concepts.

Statutory income

38. As the MIF payments are not considered to be ordinary income, it is necessary to consider whether the payments could also be statutory income under section 6-10.

39. Section 6-10 includes in assessable income amounts that are not ordinary income; these amounts are statutory income. A list of the statutory income provisions can be found in section 10-5. That list includes a reference to section 15-2.

40. Subsection 15-2(1), provides that assessable income includes:

> ... the value to you of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to you in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you ...

41. Prior to 14 September 2006, the former paragraph 26(e) of the *Income Tax Assessment Act 1936* applied to the athletes in the same manner as subsection 15-2(1) of the ITAA 1997.

42. The main issue to consider with respect to subsection 15-2(1) is whether the MIF payment is '... provided to you in respect of ... any employment of or services rendered ...'. Whilst the athletes are not considered 'employees', subsection 15-2(1) also includes in assessable income those allowances etc. which are paid in respect of 'services rendered'.

43. There is no agreement between any parties that requires athletes to provide or supply services to the AOC. Athletes are required to meet certain criteria in order to qualify for the payments however, these conditions do not amount to the rendering of services to the AOC. As such, the MIF payments are not assessable under section 15-2 because the athletes are not considered to be employees, nor are they 'rendering services'.

General deductions

44. Taxpayers are entitled to deduct from their assessable income any loss or outgoing to the extent it was incurred in gaining or producing their assessable income under section 8-1.

45. Expenses incurred in pursing sports are not allowable as a deduction against the MIF payments as these expenses do not relate to the payments received.

Pay as You Go Withholding

46. The relationship between the AOC and the athletes in receipt of the MIF payments is not one of employer and employee. Furthermore, the relationship between the athletes and the AOC is not one of the provision of services. Accordingly the payments are not regarded as withholding payments under Division 12 of Schedule 1 to the TAA. The AOC will not be required to withhold amounts from these payments nor will they have any other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, payment summaries and annual reporting.

Appendix 2 – Detailed contents list

47. The following is a detailed contents list for this Ruling:

References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 1999/17

Subject references:

- voluntary payments to sportspersons

Legislative references:

- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 15-2(1)
- TAA 1953
- TAA 1953 Sch 1 Div 12
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Case references:

- FC of T v. Blake 84 ATC 4661; (1984) 15 ATR 1006
- FC of T v. Dixon (1952) 86 CLR 540; (1952) 10 ATD 82
- FC of T v. Harris (1980) 42 FLR 36; 80 ATC 4238; (1980) 10 ATR 869
- GP International Pipecoaters Pty Ltd v. FC of T (1990) 170 CLR 124; 90 ATC 3238; 21 ATR 1
- Hayes v. FC of T (1956) 96 CLR 47; (1956) 11 ATD 68
- Scott v. FC of T (1935) 35 SR (NSW) 215; (1935) 3 ATD
- Scott v. FC of T (1966) 117 CLR 514; (1966) 14 ATD 286
- The Squatting Investment Co Ltd v. FC of T (1953) 86 CLR 570; (1953) 10 ATD 126

ATO references

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