


# ***CR 2011/65 - Income tax: assessable income: football umpires: Essendon District Football League Inc***

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## Class Ruling

### Income tax: assessable income: football umpires: Essendon District Football League Inc

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#### **1 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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

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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 8-1 of the ITAA 1997; and
- section 15-2 of the ITAA 1997.

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 comprises all individuals who receive payments from the Essendon District Football League Inc (EDFL) to officiate Australian Rules football matches as umpires in the western region of Melbourne.
4. The entities described in paragraph 3 of this Ruling to whom this Ruling applies are collectively referred to in this Ruling as umpires.

## Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
6. 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 10 to 21 of this Ruling.
7. 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.
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## Date of effect

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9. This Ruling applies from 1 July 2010. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

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10. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Application for Class Ruling dated 11 March 2011; and
- Further information provided by email on 11 May 2011.

11. The purpose of the EDFL is to encourage, promote, control, arrange and develop the playing of Australian Rules football by and between its affiliated clubs and their players.

12. In all cases umpires are appointed to matches by the EDFL and no club has any influence over which umpires are appointed to which games. All appointments are on a merit and development basis. Umpires appointed to games are assessed on their ability.

13. Umpires may officiate at more than one match per week although this is avoided if possible.

14. Umpires only receive match payments, no other allowances are received by umpires for travel, training or tribunal attendance.

15. Umpires are paid a match fee for each game they officiate and amounts received in a season depend on the level and number of games at which an umpire officiates. Current match fees are such that the most any umpire could receive in a season is \$3,500.

16. The EDFL retains a percentage of the fees charged to its member clubs to cover administration expenses and a work cover insurance premium (which covers loss of occupational income in the event of an injury). The balance is then paid to the umpires as match fees via electronic funds transfer on a monthly basis.

17. All umpires are financial members of the Essendon District Football League Umpires Association (EDFLUA).

18. A membership fee (currently \$40.00) is deducted from the umpire's match fees. Once the membership is collected the EDFL forwards it onto the EDFLUA.

19. The cost for umpiring uniforms is deducted from match fees. Uniforms include match day apparel as well as umpiring uniforms.

20. The umpires meet their own costs of travel to the relevant grounds.

21. The match fees 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 the costs associated with participation.

## Ruling

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22. The match fees paid by the EDFL to umpires officiating in the League are not assessable income under sections 6-5 or 15-2.

23. Losses and outgoings incurred by umpires officiating in the League in connection with their activities as an umpire cannot be claimed as a deduction under section 8-1 or any other provision of the ITAA 1997.

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**Commissioner of Taxation**

29 June 2011

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## Appendix 1 – Explanation

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**❶** *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.*

24. 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

25. Subsection 6-5(1) provides that the assessable income of a taxpayer includes income according to ordinary concepts (ordinary income).

26. The legislation does not provide specific guidance on the meaning of ordinary income. However, a substantial body of case law exists which identifies likely characteristics.

27. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*,<sup>1</sup> the Full High Court stated:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

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<sup>1</sup> (1990) 170 CLR 124 at 138; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

28. Amounts that are periodical, regular or recurrent, relied upon by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income, as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.<sup>2</sup> Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.<sup>3</sup>

29. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.<sup>4</sup> The whole of the circumstances must be considered<sup>5</sup> and the motive of the payer may be relevant to this consideration.<sup>6</sup>

30. 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 will not be included in their assessable income as ordinary income, even if the receipts are regular or periodical.

31. A pastime or hobby can be described as a social or personal pursuit of a non-commercial nature. Amounts received from engaging in a pastime or hobby are generally not intended to, and often do not, cover expenses.

32. The Commissioner accepts that the activities of the umpires who receive payments from the EDFL are a social or personal pursuit of a non-commercial nature and constitute a pastime or hobby, with the payments received being from the pursuit of that pastime or hobby. Consequently, the payments received are not assessable as ordinary income.

33. In forming the opinion that the umpires are engaged in a pastime or hobby, the Commissioner has taken into account the number of matches at which they are likely to officiate in a season, the amount and the purpose of the payments they can receive, the factors that can motivate their participation, and the level or division of the sporting competition.

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<sup>2</sup> *Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

<sup>3</sup> *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; (1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 456 (per Fullagar J).

<sup>4</sup> *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 375; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73; (1956) 6 AITR 248 at 254; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

<sup>5</sup> *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627-628 per Kitto J.

<sup>6</sup> *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527-528; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

**Statutory income**

34. Section 6-10 refers to assessable amounts that are not ordinary income. These amounts are called statutory income. A list of the statutory income provisions can be found in section 10-5. The most relevant provision to consider for football umpires is the potential operation of section 15-2.

35. Subsection 15-2(1) states that:

Your 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...

36. Amounts that are a reward or remuneration for services rendered, or a product, incident or consequence of employment, come within the scope of subsection 15-2(1).<sup>7</sup>

37. Umpires covered by this Ruling are not considered to be employees of the EDFL. The payments are considered to be incidental to a pastime or hobby and not a product or incident of any employment or a reward for services rendered by them. As such, the payments are not assessable under section 15-2.

38. As the payments are neither ordinary nor statutory income, they are not assessable income of the umpires who receive them.

**General deductions**

39. As the payments received by the umpires are not assessable income, all losses and outgoings that are incurred in connection with these activities are not allowable as a deduction under section 8-1. Nor will a deduction be allowable under any other provision of the ITAA 1997.

**Pay As You Go (PAYG) withholding**

40. As explained above, payments made to an umpire engaged in a hobby or pastime activity are not assessable income. The payments are not regarded as withholding payments under Division 12 of Schedule 1 to the *Taxation Administration Act 1953*. An entity making payments to umpires who are in the class of entities to which this Ruling applies will not be required to withhold amounts from these payments, nor do they have any other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, providing payment summaries, or annual reporting.

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<sup>7</sup> *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274.

## **Appendix 2 – Detailed contents list**

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

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 2006/10

*Subject references:*

- hobby vs business
- income
- sport
- sporting organisations
- sports officials
- sportspersons
- voluntary payments to sportspersons

*Legislative references:*

- ITAA 1997
- 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
- Copyright Act 1968

*Case references:*

- Commissioner of Taxation v. Rowe (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392

- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation 77 ATC 4255; (1977) 7 ATR 519
- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5 AITR 443
- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 AITR 248
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367
- Smith v. Federal Commissioner of Taxation (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274
- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570

ATO references

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