


***CR 2011/92 - Income tax: Mike Fitzpatrick
Scholarship payments provided by the Australian
Football League Players' Association***

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Class Ruling

Income tax: Mike Fitzpatrick Scholarship payments provided by the Australian Football League Players' Association

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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, 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 provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provisions

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

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 15-2 of the ITAA 1997.

All subsequent references in this Ruling are to the ITAA 1997, unless stated otherwise.

Class of entities

3. The class of entities to which this Ruling applies comprises current school student Australian Rules football players who are in receipt of benefits, other than a living allowance, under a Mike Fitzpatrick Scholarship paid by the Australian Football League Players' Association (AFLPA).

Qualifications

4. The Commissioner makes this Ruling on the precise scheme identified in this 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 9 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.

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Date of effect

8. This Ruling applies from 1 July 2007 to 30 June 2011. The Ruling continues to apply after 30 June 2011 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. 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

9. 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:

- Class Ruling application from Dominion Private Clients dated 13 February 2008;
- AFLPA Mike Fitzpatrick Scholarship application form; and
- Rules of the Australian Football League Players' Association.

10. The AFLPA is an independent representative sporting body established to represent the interests of individuals who are eligible to be members, including current players in the Australian Football League (AFL).

11. The AFLPA performs the following functions:

- acts as the collective and representative voice of players in relation to issues that affect AFL players;
- works to achieve and maintain an appropriate level of fair minimum terms and conditions for all AFL players;
- provides ongoing professional support and counselling in a wide range of matters such as personal development, financial, legal, marital, grief, etc; and
- works with the AFL and AFL Clubs to enhance the game nationally and increase the gross revenue of the competition.

12. Individuals who are eligible to be members of the AFLPA currently include playing members, scholarship player members, past player members and life members.

13. No member is contracted to play in the AFL by the AFLPA and the members are not employees of the AFLPA. The only relationship that exists between the AFLPA and the individual player is that of association and member.

14. In accordance with the AFLPA's function and goals to provide players with opportunities to enhance their education, training, personal development and welfare, it established the Mike Fitzpatrick Scholarship.

15. The Mike Fitzpatrick Scholarship is designed to support promising school age players who aspire to an AFL career to complete their secondary education and training so that they are better able to establish a career after football. In granting the scholarship, the committee considers which players are less privileged and under some disadvantage in relation to completing Year 12.

16. The scholarship provides a bursary to a successful applicant for a period of 12 months, from 1 January to 31 December. The last scholarships were awarded in 2010.

17. To be eligible to apply for a scholarship, applicants must:

- be in full-time education;
- be players 15 to 17 years of age as at 30 April of the scholarship year and identified as a talented Australian Rules footballer aspiring to be an AFL player;
- be players in secondary school (or the equivalent) and be seeking financial assistance – a player can receive the scholarship only once and is ineligible if already in receipt of an AFL Scholarship;
- include an itemised account of their anticipated annual expenses for the scholarship in their application;
- provide a copy of their most recent school report.

18. Players can be nominated for the scholarship by their coach, the president of their state league club or by an AFL club employee. Both the player and the nominator have to complete the application for the scholarship.

19. Successful applicants receive financial support on such terms as the AFLPA Scholarship Committee considers appropriate. The maximum amount of support offered under the scholarship is \$5000. In exceptional circumstances, support includes the payment of an allowance for living expenses. However, the payment of a living allowance is not part of the scheme that is the subject of this Ruling.

20. Payment is generally made as a reimbursement on presentation of receipts. However, in some circumstances payment may be made in anticipation of expenses.

21. The player is required to remain a full-time student in secondary school (or its equivalent) for the period they are in receipt of the scholarship.

22. The AFLPA can terminate the scholarship if the player fails to observe any of the specified criteria of the scholarship or engage in conduct unbecoming of a scholarship holder.

23. The AFLPA allocates a budgeted amount to the Mike Fitzpatrick scholarship each year. This amount is not provided by any sponsor but funded entirely by the AFLPA. Where the amount is not fully allocated, the Scholarship Committee can review the scholarship payments made to successful applicants with the aim of providing those players with extra funding.

24. Players who receive the scholarship are under no obligation to provide or perform any service, including making appearances for the AFLPA or any other party.

Ruling

Ordinary income

25. Amounts received by players under the Mike Fitzpatrick Scholarship are not assessable as ordinary income under section 6-5.

Statutory income – section 15-2

26. Amounts received by players under the Mike Fitzpatrick Scholarship are not assessable as statutory income under section 15-2.

Capital gains tax

27. There are no CGT consequences when a player receives an amount under the Mike Fitzpatrick Scholarship.

Commissioner of Taxation

12 October 2011

Appendix 1 – Explanation

① 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.

28. 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

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

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

31. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*, 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.¹

32. 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,² as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.³ Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.⁴

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

² *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5 AITR 443.

³ *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 AITR 248; *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

⁴ *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).

33. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁵ The whole of the circumstances must be considered⁶ and the motive of the payer may be relevant to this consideration.⁷

34. In *Scott v. Federal Commissioner of Taxation*,⁸ Windeyer J considered whether a gratuitous payment to the taxpayer's solicitor was income. His Honour held that, to be income, the gratuitous payment had to be in a relevant sense a product of the donee's income-producing activities.⁹ In *Federal Commissioner of Taxation v. Harris*,¹⁰ a bank made a lump-sum payment to supplement a former employee's pension so as to alleviate the negative effects of high inflation. The majority held that the payment was not a product of the former employment and this was an important element in finding that the payment was not income.

35. There is no employment or business relationship between the player and the AFLPA. A successful applicant is not required to enter into any contractual relationship with either the AFLPA or a sponsor to perform services of any kind in return for the payment of the scholarship.

36. The scholarship is designed to support young players in their education and training while they are aspiring to an AFL career. It is intended to cover expenses such as school fees, textbooks, school uniform, travel to and from school, and school excursions.

37. Payments are generally made on a reimbursement basis on presentation of receipts for predetermined expenses. It is not a form of periodic payment, even if the player has multiple expenses which are claimed as and when incurred. The payment is not expected or relied upon by the player to meet ordinary living expenses.

38. These factors, when considered together, lead to the conclusion that the reimbursements of education expenses under the scholarship are not income according to ordinary concepts.

Statutory income – section 15-2

39. Section 6-10 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included as assessable income by another provision.

⁵ *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* (1977) 34 FLR 375 at 402; 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

⁶ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627; (1953) 5 AITR 496; 24 ATR 527.

⁷ *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.

⁸ (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367.

⁹ At 527.

¹⁰ (1980) 43 FLR 36; 80 ATC 4238; (1980) 10 ATR 869.

40. Section 10-5 lists provisions about statutory income and included in this list is section 15-2 (formerly paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936)).

41. Section 15-2 provides that the value of all allowances, gratuities, compensation, benefits, bonuses and premiums allowed, given or granted directly or indirectly in respect of employment or services rendered is included in assessable income.

42. A scholarship payment will be statutory income under section 15-2 if it is provided to the eligible player in respect of, or for or in relation directly or indirectly to, any employment or services rendered by the eligible player.

43. There is no employment relationship between the scholarship recipient and the AFLPA. Furthermore, the documents explaining the scheme establish that the recipients are not providing services to the AFLPA. The recipients are required to meet certain conditions in order to qualify for payment of the scholarship. These do not amount to the rendering of services to the AFLPA.

44. As such the payments are not assessable under section 15-2 because the players are not considered to be employees, nor are they rendering services to the AFLPA.

Capital gains tax

45. There are no CGT consequences as a result of a player receiving an amount under the Mike Fitzpatrick Scholarship.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:
TR 2006/10

Subject references:

- capital gains tax
- education payments
- employment relationship
- ordinary income
- statutory income
- voluntary payments to sports persons

Legislative references:

- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 10-5
- ITAA 1997 15-2
- TAA 1953
- Copyright Act 1968

Case references:

- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation (1977) 34 FLR 375;

- 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
- Federal Commissioner of Taxation v. Harris (1980) 42 FLR 36; 80 ATC 4238; (1980) 10 ATR 869
- Federal Commissioner of Taxation v. Rowe (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392
- 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
- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570; (1953) 5 AITR 496; 24 ATR 527.

ATO references

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