

CR 2014/21 - Income tax: Education and Training Grant payments provided by the Australian Cricketers Association (ACA)

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Class Ruling

Income tax: Education and Training Grant payments provided by the Australian Cricketers Association (ACA)

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- 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 is:

- contracted Australian, state or rookie cricket players; and

- Australian, state or rookie cricket players who have retired or been delisted from one of these categories within the last year;

who hold current ACA membership.

Qualifications

4. The Commissioner makes this Ruling based 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 8 to 27 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
- this Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 1 July 2013. 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

8. 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:

- Request for Opinion received 25 October 2013
- Request for Class Ruling received 6 December 2013
- ACA Education and Training Grant criteria and application form
- Constitution of ACA (Constitution).

9. The ACA is an independent, representative, sporting body established to represent the interests of individuals, who formerly and currently play cricket at the national, state or rookie levels.

10. Its membership base extends to both male and female cricketers, being past or present players.

11. As stated in its Constitution, the objects of the ACA are:
 - (a) to act as the collective and representative voice of first class cricketers in Australia
 - (b) to safeguard the rights of both present and past first class cricketers
 - (c) to provide and improve the welfare of its members
 - (d) to provide advice, services or assistance where deemed appropriate
 - (e) to pursue initiatives that will ultimately benefit the membership
 - (f) to promote the sport of cricket.
12. There are three classes of membership of the ACA:
 - (a) Life Members, who shall pay a once-off subscription fee of an amount determined, from time to time, pursuant to the Constitution and be entitled to membership for life without payment of additional subscriptions
 - (b) Ordinary Members, who shall pay an annual subscription fee of an amount determined, from time to time, pursuant to the Constitution
 - (c) Kerry Packer Award Members, who shall be entitled to membership for life without payment of any subscription fees.
13. Members are not employees of the ACA. The only relationship between the ACA and the individual player is that of association and member.
14. In fulfilment of the ACA's functions and goals, the ACA have established and funded the Education and Training Grant Program (the Program) to encourage players to begin planning and preparing for life after cricket.
15. To be eligible, an individual must be an ACA member and not retired or delisted from one of the playing categories for a period of greater than 12 months.
16. Grants can be used to fund any further study, provided the course is accredited with a registered training or education institution. The course undertaken must be related to the applicant's career after cricket.
17. Grants are available for course fees, student fees, tuition and essential course materials. Grants do not cover items such as stationery, text books, calculators or general equipment or living expenses.
18. The total funding available under the Program is \$350,000 per annum.

19. Applicants are required to complete and submit an application form. Applicants must provide a brief explanation as to the reason for undertaking further education and training including how this will assist their career after cricket.

20. Applicants who successfully obtain a grant are able to access up to a maximum of \$4,000 per annum unless the ACA Training and Education Sub-Committee exercises its discretion to increase the maximum amount threshold.

21. Applications are accepted over two rounds each year and only those submitted by the due date will be considered.

22. Grants are determined at the absolute discretion of the Education and Training Sub-Committee. The value of grants provided will be determined by the number of players requesting assistance, the type of course being completed and the player's commitment to study.

23. Surplus funds not allocated for grants for that year remain in the ACA's Professional Development Program Budget.

24. There are three options for payment of grants:

- direct payment to the educational institution
- reimbursement to the member
- reimbursement to a third party (such as a member's parents).

25. Payments will be made upon receiving a dated invoice or receipt for the claimed amount of legitimate educational expenses from an accredited education institution.

26. If payment is to be made to a third party, the applicant must provide written documentation to the Education and Training Sub-Committee. Accordingly an applicant must have incurred the cost prior to reimbursement. That is, the member would have generally enrolled in the course before seeking reimbursement.

27. Applicants will be required to return grant monies to ACA in the following circumstances:

- (i) the applicant withdraws from a course
- (ii) the applicant has failed a course or unit of study and has not demonstrated that his failure was due to some reason other than the applicant's withdrawal or non-attendance by the applicant.

Ruling

Education and Training Grants

Ordinary income

28. Amounts received under the Program are not assessable as ordinary income under section 6-5.

Statutory income – section 15-2

29. Amounts received under the Program are not assessable as statutory income under section 15-2.

Capital gains tax

30. There are no CGT consequences when an eligible member receives amounts under the Program.

Commissioner of Taxation**12 February 2014**

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.*

31. 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*)
- an amount or benefit that through the operation of the provisions of the tax law is included in assessable income (*statutory income*).

Ordinary income

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

33. 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.

34. 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

35. 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; [1990] HCA 25 at [14]; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

² *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; [1952] HCA 65; (1952) 10 ATD 82; (1952) 5 AITR 443.

³ *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; [1956] HCA 21; (1956) 11 ATD 68; (1956) 6 AITR 248; *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; [1995] FCA 1611; 95 ATC 4691; (1995) 31 ATR 392.

⁴ *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; [1952] HCA 65 at [7]; (1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 456 (per Fullagar J).

36. 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

37. 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.

38. There is no employment or business relationship between the member and the ACA. A successful applicant is not required to enter into any contractual relationship with either the ACA or a sponsor to perform services of any kind in return for the payment of the grant monies.

39. The grant is for payments for course fees, student fees, tuition and essential course materials for courses accredited with registered educational institutions. It does not specifically contribute towards the member's living expenses. The grants are made by direct payment to the educational institution, reimbursement to the player or reimbursement to a third party.

40. The timing of a payment varies, depending on the expense claimed. Payments are only made upon receipt of a dated invoice or receipt and the grant period does not extend beyond one year unless further applications are made and approved.

41. The payments are not periodic payments, even if the expense should arise more than once. The payment is not expected or relied upon by the recipient to meet ordinary living expenses.

42. These factors, when considered together, lead to the conclusion that the grants are not ordinary income under subsection 6-5(1).

⁵ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; [1966] HCA 48 at [22]; (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] HCA 21 at [17]; (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; [1977] FCA 3 at [35]; 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] HCA 13 at [3]; (1953) 5 AITR 496; 24 ATC 527 (per Kitto J).

⁷ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; [1966] HCA 48 at [22]; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

⁸ 117 CLR 514; [1966] HCA 48; (1966) 14 ATD 286; (1966) 10 AITR 367.

⁹ At 527 and [22].

¹⁰ (1980) 43 FLR 36; [1980] FCA 60; 80 ATC 4238; (1980) 10 ATR 869.

43. If paid directly to an educational institution on behalf of a recipient of the grant, the payment is not derived as income by the recipient of the grant under subsection 6-5(4), as the payment would not be ordinary income if received personally.

Statutory income – section 15-2

44. 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.

45. Section 10-5 lists provisions about statutory income and included in this list is section 15-2.

46. 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.

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

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

49. 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 ACA.

Capital gains tax

50. There are no CGT consequences as a result of an eligible member receiving an amount under the Program.

Appendix 2 – Detailed contents list

51. 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 sportspersons

Legislative references:

- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-5(4)
- 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; [1977] FCA 3; 77 ATC 4255; (1977) 7 ATR 519
- *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 [1952] HCA 65; (1952) 10 ATD 82; (1952) 5AITR 443
- *Federal Commissioner of Taxation v. Harris* (1980) 43 FLR 36; [1980] FCA 60; 80 ATC 4238; (1980) 10 ATR 869
- *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; [1995] FCA 1611; 95 ATC 4691; (1995) 31 ATR 392
- *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; [1990] HCA 25; 90 ATC 4413; (1990) 21 ATR 1
- *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; [1956] HCA 21; (1956) 11 ATD 68; (1956) 6 AITR 248
- *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; [1966] HCA 48; (1966) 14 ATD 286; (1966) 10 AITR 367
- *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570; [1953] HCA 13; (1953) 5 AITR 496 24; ATR 527

ATO references

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