


CR 2015/55 - Income tax: assessable income: tennis officials: Tennis Australia

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Class Ruling

Income tax: assessable income: tennis officials: Tennis Australia

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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

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 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 resident individuals who receive payments from Tennis Australia (and/or its affiliated member associations) to officiate at tennis tournaments/competitions within Australia; but excluding individuals who:

- receive payments for officiating at the Australian Open
- enter into employment contracts with Tennis Australia (or its member associations), or
- are engaged regularly as Referees and Chair Umpires [Bronze Badge and above] at Pro-Tour tournaments.

In this Ruling, persons belonging to this class of entities are referred to as Officials.

Qualifications

4. The Commissioner makes this Class Ruling based on the precise scheme identified in the Class 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 19 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

7. This Ruling applies from 1 July 2015 to 30 June 2020. 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.

9. Tennis Australia (TA) services tennis events (tournaments/competitions) by providing trained officials (Officials) for those events throughout Australia. Approximately 20% of these tournaments/competitions are run by TA. The remaining tournaments/competitions are sanctioned to local tennis clubs/centres and TA member associations (for example, Tennis Victoria).

10. Historically the various State Divisions of Tennis Officials Australia Inc. (TOA) provided Officials for tournaments/competitions and were responsible for the majority of payments to those Officials. From 1 May 2015 TA has taken over responsibility for paying the Officials.

11. From July 2015 for individuals to become TA Officials they must obtain TA officiating membership by completing an application form and paying an annual membership fee. Existing TOA memberships will run until June 2015.

12. TA Officials are paid a fee for each day they officiate and amounts received depend on the level of Official, the tournament/competition, whether they have to travel a certain distance to get to the tournament/competition and the number of days and hours per day which they officiate.

13. TA will issue an 'availability' form to active Officials who are then able to state their interest in the specific tournament/competition and a selection is then made.

14. Officials are appointed to matches at tournaments/competitions by TA. No Club or League has any influence over which Officials are appointed to which match. All appointments are on merit whereby the most experienced and capable Officials are appointed to the more senior or important matches. Officials appointed to matches at tournaments/competitions are assessed for their ability and further appointments are governed by their capabilities. Officials are required to accept standard conditions for their appointment to each tournament/competition (via an email confirmation to TA) however there are no employment contracts in place between TA and Officials.

15. The Officials are covered by TA insurance policies for Public Liabilities, Personal Accident Insurance and Professional Indemnity.

16. The tournament/competition fees paid to Officials 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.

17. Officials are required to incur their own expenditure for sunscreen, uniforms, tennis shoes and all other sundry items required to perform their duties. Shirts and hats are provided by TA.

18. Officiating is extremely ad hoc. It is very seasonal and not necessarily regular. On average, any one Official will officiate at tournaments/competitions on less than fifteen days during any calendar year.

19. Regular travel to tournaments/competitions will be rare.

Ruling

20. The tournament fees received by Officials are not assessable income under sections 6-5 or 15-2.

21. Losses and outgoings incurred by Officials in connection with their activities as Officials cannot be claimed as a deduction under section 8-1 or any other provision of the ITAA 1997.

Commissioner of Taxation

29 July 2015

Appendix 1 – Explanation

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.*

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

23. 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.

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

25. Amounts that are periodical, regular or recurrent, relied upon by a 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.² Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.³

26. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient⁴. The whole of the circumstances must be considered⁵ and the motive of the payer may be relevant to this consideration.⁶

¹ [1990] HCA 25; (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1 at CLR 138; ATC 4420; ATR 7.

² *Commissioner of Taxation v. Rowe* [1995] FCA 1611; (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

³ *Federal Commissioner of Taxation v. Dixon* [1952] HCA 65; (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5 AITR 443 at CLR 568; ATD 92; AITR 456 (per Fullagar J).

⁴ *Scott v. Federal Commissioner of Taxation* [1966] HCA 48; (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367 at CLR 526; ATD 293; AITR 375; *Hayes v. Federal Commissioner of Taxation* [1956] HCA 21; (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 AITR 248 at CLR 55; ATD 73; AITR 254; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* [1977] FCA 3; 77 ATC 4255; (1977) 7 ATR 519 at ATC 4273; ATR 539.

⁵ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* [1953] HCA 13; (1953) 86 CLR 570 at 627–628 per Kitto J.

⁶ *Scott v. Federal Commissioner of Taxation* [1966] HCA 48; (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367 at CLR 527–528; ATD 293; AITR 376.

27. 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.

28. 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.

29. The Commissioner accepts that the activities of the Officials participating at tournaments/competitions are a social or personal pursuit of a non-commercial nature and constitute a pastime or hobby. Consequently, the payments received are not assessable as ordinary income.

30. In forming the opinion that the Officials are engaged in a pastime or hobby, the Commissioner has taken into account:

- Officials are not under employment contracts with TA or its member associations and do not officiate regularly at higher, Pro-tour, tournaments
- officiating is extremely ad hoc and seasonal. Officials are likely to officiate, on average, at less than 15 days in any calendar year with each tournament/competition likely to last two or more days
- the amount of each payment made by TA is not intended to, and does not usually cover Officials' expenses for attending the tournament/competition, and
- the purpose of the payments to Officials is to encourage their participation in local sporting activities by subsidising costs associated with their participation.

Statutory income

31. 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 the Officials is the potential operation of section 15-2.

32. 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...

33. 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).⁷

34. Officials covered by this Ruling are not considered to be employees of TA or its affiliated member associations. 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.

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

General deductions

36. As the payments received by the Officials 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

37. As explained above, payments made to an Official 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*. TA or its affiliated member associations making payments to Officials 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.

⁷ *Smith v. Federal Commissioner of Taxation* [1987] HCA 48; (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274.

Appendix 2 – Detailed contents list

38. 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:

- income
- hobby v business
- deductions and expenses
- sport
- sporting organisations
- sports officials
- PAYG withholding

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
- TAA 1953
- TAA 1953 Sch 1 Div 12

Case references:

- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation [1990] HCA 25; (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Commissioner of Taxation v. Rowe [1995] FCA 1611; (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392
- Federal Commissioner of Taxation v. Dixon [1952] HCA 65; (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5 AITR 443
- Scott v. Federal Commissioner of Taxation [1966] HCA 48; (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367
- Hayes v. Federal Commissioner of Taxation [1956] HCA 21; (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 AITR 248
- Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation [1977] FCA 3; 77 ATC 4255; (1977) 7 ATR 519
- Squatting Investment Company Limited v. Federal Commissioner of Taxation [1953] HCA 13; (1953) 86 CLR 570
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ATO references

NO: 1-6H67WBA

ISSN: 1445-2014

ATOlaw topic: Income tax ~~ Assessable income ~~ Business vs hobby

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