

CR 2015/84 - Income tax: Education and Training Grant provided by the Australian Football League Players' Association



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Class Ruling

Income tax: Education and Training Grant provided by the Australian Football League Players' Association

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❶ 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), and
- section 6-10 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 is current and former members of the Australian Football League Players' Association (AFLPA) who receive benefits under an Education and Training Grant program.

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

Qualifications

4. The Commissioner makes this Class Ruling based on the precise arrangement 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 18 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 2014 to 30 June 2018. 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 AFLPA

9. The following information is contained within the *AFLPA Statement of Purposes and Rules*:

Statement of Purposes

The Australian Football League Players' Association (AFLPA) was established to provide an appropriate consultative mechanism for the AFL and the Clubs to consult with the AFLPA as the collective voice of players, in making and implementation of player rules and other matters affecting an AFL player. The purposes of the AFLPA are therefore to:

- 1 provide Members with unified and representative organisation;
- 2 facilitate marketing and licensing opportunities for Members;
- 3 to protect and advance the professional and industrial interests of Members who have contracted to play with a Club in the Australian Football League.

- 4 provide information and assistance to Members;
- 5 raise or borrow money on such terms and in such a manner as the AFLPA deems appropriate from time to time;
- 6 administer and deal with the funds of the Association as deemed appropriate from time to time;
- 7 develop such arrangements, projects and schemes which will bring further benefits to Members as individuals or to the AFLPA;
- 8 achieve and maintain an appropriate level of fair minimum terms and conditions for all AFL players commensurate with the professionalism of the AFL is directed to the benefit of past, present and future players;
- 9 improve the terms and conditions to ensure the AFL continues to attract the top sportspersons to the competition;
- 10 ensure a role for players through the AFLPA in the development of policies, procedures and arrangements to be directed at player safety and welfare issues.
- 11 establish a long term program committed to providing on-going professional support and counselling in a wide range of matters such as personal development, financial, legal, marital grief etc.
- 12 mediate in regard to, and, if possible, to reconcile and settle disputes effecting individual Members or groups of Members.
- 13 assist, participate and work with the AFL and the Clubs to enhance the game nationally, and increase the gross revenue of the competition.
- 14 take all steps and actions consistent with the Rules and the Associations Incorporation Act (1981) Vic, to implement and carry out the purposes of the AFLPA.

...

4 Membership

- 4.2 Upon a Player being registered with a Club to play Australian Rules Football for the first time, the Player is deemed to be a provisional member of the Association.
- 4.3 Within 28 days of the Player being registered with a Club in accordance with Rule 4.2, the Committee must write to the Player, inform him that he has been granted provisional membership and outline the necessary steps required for membership. Provisional membership will last for two weeks, and provisional members shall be entitled to all the benefits and rights which accrue to members of the Association. Provisional members, or former provisional members who remain registered with a Club to play Australian Rules Football, on payment of the entrance fee and annual subscription under these Rules, and on completion of an application form (the content of which and satisfactory completion of which shall be a matter of determination by the Executive Committee) may be granted membership.

...

36 Collective Bargaining Agreement

- 36.1 Each Member acknowledges that the Committee may, on behalf of the Member enter into negotiations with the AFL to agree on a Collective Bargaining Agreement and each Member agrees to be bound by the terms of the Collective Bargaining Agreement.

Collective Bargaining Agreement (CBA)

10. The AFL (Australian Football League) as the controlling body of the Competition and the AFLPA entered into a CBA operating for the period 1 November 2011 to 31 October 2016.

11. The CBA is an agreement between the AFL and the AFLPA which in accordance with clause 2 applies to:

- the AFL
- the AFLPA
- each AFL Club, and
- each player employed by an AFL Club.

12. As per the background to the CBA, the AFL has the power to bind the AFL Clubs to the CBA while the AFLPA has the authority to bind the players to the CBA.

13. A player is defined in the CBA to mean:

...a player of Australian Football who is or becomes contracted with an AFL Club or who is or becomes listed with the AFL as a Player with an AFL Club, and specifically excludes players on a Scholarship List or International Scholarship players.

14. Clause 22 deals with 'Player Education and Training and Welfare' where subclauses 22.2 to 22.4 state:

22.2 Contribution

- (a) AFL agrees to contribute each year to the AFLPA the amount set out in item 4 of Schedule B. These funds will be expended by the AFLPA as determined by the AFLPA and, such purposes may include but not be limited to Player education and training, health and welfare.
- (b) The AFLPA acknowledges that the amount to be contributed to the AFLPA in accordance with clause 22.2(a) includes a provision for a minimum payment of licensing royalties due to the AFLPA under this Agreement.

22.3 Administration

- (a) The bodies established by the AFLPA pursuant to the 1998 CBA to administer payments from the AFLPA Player's Welfare Fund shall continue to administer payments relating to education, training and Player welfare including determining the relevant criteria on which applications will be assessed, the approval of payment to be made to a Player and imposing of any relevant conditions applicable to payment.
- (b) The composition of the bodies referred to clause 22.3(a) shall be determined by AFLPA, but must include a representative of the AFL (as nominated by AFL and approved by AFLPA).

22.4 Education and Training

- (a) AFLPA shall, in conjunction with the AFL Industry Education Committee and relevant State training and educational authorities, identify appropriate traineeships, educational opportunities and courses, and where appropriate liaise with such bodies to establish traineeships and courses focussed on the needs of Players.
- (b) AFLPA shall provide regular updates to the AFL on support programs funded by monies provided to the AFLPA by AFL pursuant to this clause.

15. In accordance with paragraph 22.2(a), item 4 of Schedule B provides that the AFL will provide funding to the AFLPA for use in player education and training, health and welfare.

Education and Training Grants

16. The *AFL Players Education and Training Grant* form requires applicants to provide the reasons for undertaking a course/training together with the bank account details into which payment is to be made.

17. Under 'Criteria' it states:

1.0 Eligibility

- 1.1 The player must be a current member of the AFL Players' Association and be currently contracted with an AFL Club and permanently on the Primary, Veterans or Rookie List of an AFL Club.
- 1.2 Past Senior listed players and Rookie listed players who were members of the AFL Players' Association in the last year the Player played in the AFL competition are eligible for up to three (3) years after their last playing year.
- 1.3 Applicants must be currently enrolled in the course or eligible to enrol in the course.
- 1.4 The course undertaken must be accredited with a registered training and/or educational institution.

2.0 Payments

- 2.1 Grants are approved at the absolute discretion of the AFL Players' Association Education & Training Grant Board.
- 2.2 The amount granted to the player will be determined by the total amount of all Education & Training Grants approved in the same year.
- 2.3 Approved Education & Training Grants will be paid via Electronic Funds Transfer directly into a Player's bank account.
- 2.4 The AFL Players' Association no longer pays your university fees direct to the institution. A copy of dated paid receipts for claimed amount of legitimate educational expenses from an accredited educational institution must be submitted with the application form before reimbursement to the player can be made.
- 2.5 Players undertaking University studies must submit a copy of their Semester results with the application form.
- 2.6 All short courses, Certificate 1-4, Diplomas and Professional Qualification payments are made on evidence of satisfactory completion of the course by the player (and a dated receipt/invoice). A copy of the evidence of completion must be submitted with the application form.
- 2.7 Any taxation liabilities are the responsibility of the recipient. The player must make a voluntary payment to the Tax Office and provide a receipt to claim their grant. Payments will not be made directly to a player's HECS/PELS loan.
- 2.8 The grant does not cover items such as stationery, calculators, general equipment, parking permits, library or late fees.
- 2.9 Where a third party requires reimbursement (Eg. Club or parents) the player must submit an AFL Players' Association Third Party Payment Form.

18. The following funding guidelines are provided:

- University \$2500 per year
- Professional Qual \$1000
- Masters \$3000 per year
- Tafe Certificate \$750 – \$1000
- Diploma \$2000
- Short Course \$500.

Ruling

19. The amounts received under the AFLPA's Education and Training Grant program are not assessable as ordinary income for the purposes of section 6-5.

20. The amounts received under the AFLPA's Education and Training Grant program are not assessable as statutory income for the purposes of section 6-10.

21. There are no CGT consequences when a Member receives amounts under the AFLPA's Education and Training Grant program.

Commissioner of Taxation

4 November 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. 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

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

24. 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.

25. 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

26. 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 *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; [1990] HCA 25; 90 ATC 4413; (1990) 21 ATR 1 at CLR 138; HCA [14]; ATC 4420; ATR 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; [1952] HCA 65; (1952) 10 ATD 82; (1952) 5 AITR 443 at CLR 568; HCA [7]; ATD 92; AITR 456 (per Fullagar J).

27. 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

28. 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. In *Federal Commissioner of Taxation v. Harris*,⁹ 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.

29. 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 grant monies.

30. 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, reimbursement to the player or reimbursement to a third party.

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

32. The payments made under the grant may take the form of a lump sum as a predetermined expense.¹⁰ 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.

⁵ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; [1966] HCA 48; (1966) 14 ATD 286; (1966) 10 AITR 367 at CLR 526; HCA [22]; ATD 293; AITR 375, *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; [1956] HCA 21; (1956) 11 ATD 68; (1956) 6 AITR 248 at CLR 55; HCA [17]; ATD 73; AITR 254, *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375; [1977] FCA 3; 77 ATC 4255; (1977) 7 ATR 519 at FLR 402; FCA [5]; ATC 4273; ATR 539.

⁶ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570; [1953] HCA 13; (1953) 5 AITR 496; (1953) 24 ATR 527 at CLR 627.

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

⁸ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; [1966] HCA 48; (1966) 14 ATD 286; (1966) 10 AITR 367.

⁹ *Federal Commissioner of Taxation v. Harris* (1980) 43 FLR 36; [1980] FCA 60; 80 ATC 4238; (1980) 10 ATR 869.

¹⁰ *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; [1989] FCA 491; 89 ATC 5322; (1989) 20 ATR 1652 at FCR 64; FCA [21]; ATC 5327 per Davies and Hill JJ.

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

34. 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

35. 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.

36. 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.

37. 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 ...

38. A grant 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.

39. There is no employment relationship between the grant 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 grant. These do not amount to the rendering of services to the AFLPA.

40. As such the payments are not included in assessable income by section 15-2 because the players are not considered to be employees, nor are they rendering services to the AFLPA.

Fringe Benefits Tax

41. While Fringe Benefits Tax has been considered, it has been determined that there are no Fringe Benefits Tax consequences in this instance.

Capital gains tax

42. There are no CGT consequences as a result of an eligible member receiving an amount under the AFLPA's Education and Training Grant program.

Appendix 2 – Detailed contents list

43. 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; CR 2011/91

Legislative references:

- ITAA 1997
- 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
- ITAA 1997 15-2(1)
- TAA 1953

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. Ranson (1989) 25 FCR 57; [1989] FCA 491; 89 ATC 5322; (1989) 20 ATR 1652
- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; [1952] HCA 65; (1952) 10 ATD 82; (1952) 5 AITR 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
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- Squatting Investment Company Limited v. Federal Commissioner of Taxation (1953) 86 CLR 570; [1953] HCA 13; (1953) 5 AITR 496; (1953) 24 ATR 527

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