


CR 2021/58 - Tennis Australia Limited - payments to tennis officials

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Class Ruling

Tennis Australia Limited – payments to tennis officials

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences of payments made by Tennis Australia Limited (TA) to tennis officials to officiate at non-professional tennis events within Australia.
2. Full details of this scheme are set out in paragraphs 7 to 23 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you are an individual that receives a payment from TA to officiate at a non-professional tennis event within Australia.

When this Ruling applies

5. This Ruling applies from 1 July 2020 to 30 June 2025.

Ruling

6. Payments you receive from TA for officiating at non-professional tennis events are not assessable as ordinary income for the purposes of section 6-5, nor are they statutory income for the purposes of section 6-10. Losses and outgoings incurred by you in respect

of receiving these payments from TA cannot be claimed as a deduction under section 8-1 or any other provision of the ITAA 1997.

Scheme

7. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

Tennis Australia Limited

8. TA is a not-for-profit organisation that promotes and encourages participation in the sport of tennis in Australia. To encourage members of the community to participate in local sporting activities, TA provides trained officials (TA officials) for tennis events throughout Australia.

9. TA officials have different roles, including referee, chair umpire, chief umpire, court supervisor and line umpire. TA officials do not necessarily perform the same role at every tournament/competition in which they participate.

10. To be a TA official, the individual must obtain TA officiating membership by completing an application form and paying an annual membership fee.

11. TA makes payments to TA officials to officiate at non-professional tennis events.

12. TA will issue an 'availability form' to active TA officials who are then able to state their interest in a specific tournament/competition. A selection is then made by TA with reference to availability, qualifications, merit and reasonable distribution of engagements between TA officials. No club or league has any influence over which TA officials are appointed to which match.

13. TA officials are covered by TA insurance policies including public liability, personal accident and professional indemnity.

14. The purpose of the payment is to encourage members of the community to participate in local sporting activities. The payments range between \$71–\$170 depending on the tournament/competition.

15. TA officials have costs associated with participation. For example, they 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.

16. Engagement as a TA official is not guaranteed by TA. Engagements may be seasonal and depend on the needs of TA and the particular tournament/competition.

17. Historically, of the 500+ officials engaged by TA during a year, the average amount of days a TA official is engaged is 21 days per year.

18. The average amount that a TA official is paid in an income year is \$2,566.

19. Regular travel to tournaments/competitions by TA officials is rare.

When this Ruling does not apply

20. This Ruling does not apply to payments TA makes:

- to individuals for officiating at the Australian Open, professional or semi-professional events, or
- as a part of an employment or services contract.

21. This Ruling does not apply to individuals when they are:
- engaged regularly to officiate at professional or semi-professional events, or
 - employed or carry on a business as a tennis official, referee or umpire.
22. Professional and semi-professional events include but are not limited to:
- Association of Tennis Professionals and Women's Tennis Association tour events
 - International Tennis Federation (ITF) and Universal Tennis Rating Pro Tour
 - ITF Junior Tour
 - ITF Wheelchair Tour
 - ITF Seniors Tour
 - Australian Ranking Tournaments
 - Australian Open Series.
23. If you are an individual that receives a payment from TA, and this Ruling does not apply to you, you should discuss your circumstances with your taxation adviser or the ATO.

Appendix – Explanation

❶ *This Explanation 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.*

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Payment is not included in assessable income

24. 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) as per section 6-5, or
- an amount or benefit that through the operation of the provisions of the tax law is included in assessable income (statutory income), as per section 6-10.

Ordinary income

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

26. 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.

27. In *GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth)*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.

28. 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

¹ [1990] HCA 25.

rendered by, the recipient.² Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.³

29. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁴ The whole of the circumstances must be considered⁵ and the motive of the payer may be a relevant consideration.⁶

30. In *Scott*, 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 *The Commissioner of Taxation of the Commonwealth of Australia v Harris, G.O.*⁷, 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 relationship and this was an important element in finding that the payment was not income.

31. 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.

32. 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.

33. The activities of TA officials participating at non-professional tennis events 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.

34. In forming the opinion that TA officials participating at non-professional tennis events are engaged in a pastime or hobby, the Commissioner has taken into account:

- TA officials are not under employment contracts with TA or its member associations and do not officiate regularly at professional or semi-professional tournaments
- engagements to officiate are ad hoc and irregular
- the amount of each payment made by TA is not intended to, and does not usually, cover TA officials' expenses for attending the tennis event, and
- the purpose of the payments to TA officials is to encourage their participation in local sporting activities by subsidising costs associated with their participation.

35. These factors, when considered together, lead to the conclusion that the amounts received by TA officials to participate in non-professional tennis events are not ordinary income under subsection 6-5(1).

² *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21 (*Hayes*); *Commissioner of Taxation of the Commonwealth of Australia v Rowe, Anthony John Poulston* [1995] FCA 834.

³ *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65, per Fullagar J.

⁴ *Scott v Federal Commissioner of Taxation* [1966] HCA 48 (*Scott*); *Hayes; Federal Coke Company Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1977] FCA 29.

⁵ *Squatting Investment Co Ltd v Commissioner of Taxation* [1953] HCA 13.

⁶ *Scott*.

⁷ [1980] FCA 74.

Statutory income

36. Section 6-10 provides that your assessable income includes statutory income amounts that are not ordinary income but are included as assessable income by another provision.

37. 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 TA officials is the potential operation of section 15-2.

38. 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 ...

39. 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).

40. TA 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.

41. As the payments are neither ordinary nor statutory income, they are not assessable income of the TA officials who receive them.

General deductions

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

Pay-as-you-go withholding

43. Payments made to a TA 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 TA 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.

References*Previous draft:*

Not previously issued as a draft

Legislative references:

- 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 Sch 1 Div 12

Case references:

- Commissioner of Taxation (Cth) v Dixon [1952] HCA 65; 86 CLR 540; [1953] ALR 17; 10 ATD 82; 26 ALJ 505
- Commissioner of Taxation of the Commonwealth of Australia v Rowe, Anthony John Poulston [1995] FCA 834; 60 FCR 99; 95 ATC 4691; 31 ATR 392
- Federal Coke Company Pty Limited v The Commissioner of Taxation of the

- Commonwealth of Australia [1977] FCA 29; 77 ATC 4255; 7 ATR 519; 15 ALR 449; 34 FLR 375
- GP International Pipecoaters Pty Ltd v Commissioner of Taxation (Cth) [1990] HCA 25; 170 CLR 124; 64 ALJR 392; 90 ATC 4413; 21 ATR 1
- Hayes v Commissioner of Taxation (Cth) [1956] HCA 21; 96 CLR 47; 11 ATD 68; 30 ALJ 96
- Scott v Federal Commissioner of Taxation [1966] HCA 48; 117 CLR 514; 40 ALJR 205; [1967] ALR 561; 14 ATD 286
- Squatting Investment Co Ltd v Commissioner of Taxation [1953] HCA 13; 86 CLR 570; [1953] ALR 366; 26 ALR 658; 10 ATD 126
- The Commissioner of Taxation of the Commonwealth of Australia v Harris, G.O. [1980] FCA 74; 43 FLR 36; 80 ATC 4238; 10 ATR 869; 30 ALR 10

ATO references

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