CR 2024/1 - AFL Players' Association Limited - Education and Training Grant Program

Status: **legally binding**

Class Ruling

AFL Players' Association Limited – Education and Training Grant Program

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 and fringe benefits tax consequences of amounts received by Members of the Australian Football League Players' Association (AFLPA) under the Education and Training Grant Program.

2. Details of this scheme are set out in paragraphs 9 to 41 of this Ruling.

3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

4. Terms which are defined in the Constitution of the AFL Players' Association Limited 2022 (AFLPA Constitution), referred to in paragraph 12 of this Ruling, or the Collective Bargaining Agreement, referred to in paragraph 16 of this Ruling, have been capitalised.

Note: By issuing this Ruling, the ATO is not endorsing this program. Potential participants must form their own view about the program.

Who this Ruling applies to

5. This Ruling applies to you if you:

- are a Member of the AFLPA
- are a current or past Player in the Australian Football League (AFL) or Australian Football League Women's (AFLW) Competitions, and

- receive an amount under the Education and Training Grant Program (Grant).

When this Ruling applies

6. This Ruling applies from 1 November 2022 to 31 December 2027.

Ruling

7. If you receive an amount under the Education and Training Grant Program, this is not assessable as ordinary income for the purposes of section 6-5, nor is it statutory income for the purposes of section 6-10.

8. There are no fringe benefits tax consequences under the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) as a result of you receiving an amount under the Education and Training Grant Program.

Scheme

9. 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.

Australian Football League Players' Association

10. The AFLPA is a company limited by guarantee registered under the *Corporations Act 2001.*

11. The only relationship that exists between the AFLPA and each Player is that of association and Member.

12. The objects and purpose of the AFLPA is contained within the AFLPA Constitution.

13. The following definitions are contained within rule 1.2 of the AFLPA Constitution:

- **AFL** means Australian Football League Pty Ltd ACN 004 155 211 (or any successor, person or body).
- **AFLM Club** means an Australian rules football club holding a licence from the AFL to play in the AFL's competition for men.
- **AFLM Player** means a person registered with an AFLM Club.
- **AFLPA** means AFL Players' Association Limited.
- **AFLW Club** means an Australian rules football club holding a licence from the AFL to play in the AFL's 'W' competition.
- **AFLW Player** means a person registered with an AFLW Club.
- **Club** means an AFLM Club or an AFLW Club.
- **Collective Bargaining Agreement** means any agreement between the AFLPA and the AFL which sets out the terms and conditions of employment applicable to the employment of AFLM Players and/or AFLW Players from time to time.

- **Member** means a person admitted as a member of the AFLPA under rule 5, irrespective of the person's class of membership.
- **Past Player** means a person who has played Australian rules football in any league or competition as the Board may determine from time to time.
- **Past Player Member** means a person admitted as a Member under rule 5.3.
- **Player** means an AFLM Player or an AFLW Player.
- **Player Member** means a person admitted as a Member under rule 5.2.

14. The following information is contained within the AFLPA Constitution:

2 Objects and purposes

The objects and purposes of the AFLPA are to:

(a) provide a mechanism for the AFL and the Clubs to consult with the AFLPA as the collective voice of Players, in making and implementing rules and other matters affecting Players (or any of them);

(b) provide Members with a unified and representative organisation;

(c) facilitate marketing and licensing opportunities for Members;

(d) protect and advance the professional and industrial interests of Members who are contracted to play with a Club;

(e) provide information and assistance to Members;

(f) raise or borrow money on such terms and in such manner as the AFLPA deems appropriate from time to time;

(g) administer and deal with the funds of the AFLPA as deemed appropriate from time to time, including under any player retirement scheme or hardship fund or similar ancillary fund or scheme established by or on behalf of the AFLPA and for the benefit of Members;

(h) develop such arrangements, projects and schemes designed to bring further benefits to Members as individuals or to the AFLPA;

(i) achieve and maintain an appropriate level of fair minimum terms and conditions for all Players commensurate with the status of the AFL's competitions;

(j) improve the terms and conditions to ensure the AFL continues to attract top sportspeople to the AFL's competitions as Players;

(k) ensure a role for Players through the AFLPA in the development of policies, procedures and arrangements to be directed towards Member safety and welfare issues;

(l) establish a long term program committed to making available ongoing professional support, advice and counselling for Members in a wide range of matters;

(m) mediate in regard to, and, if possible, to reconcile and settle disputes affecting individual Members or groups of Members; and

(n) assist, participate and work with the AFL and the Clubs to enhance the game of Australian rules football nationally, and increase the gross revenue derived from the AFL's competitions.

…

Status: **legally binding**

5.1 Classes of membership and transitional recognition

The classes of membership are as follows:

(a) Player Members;

(b) Past Player Members;

(c) Life Members; and

(d) any other class of membership as the Board may from time to time determine under rule 5.5.

…

6 Collective bargaining and representation

6.1 Negotiation and representation

Notwithstanding anything to the contrary in [the] constitution, each Member acknowledges and agrees that, and grants to the AFLPA and/or its CEO (who must adhere to any written direction given to the CEO by the Board), the authority to, on behalf of the Member:

(a) enter into and carry out negotiations with the AFL in respect of the terms and conditions of a Collective Bargaining Agreement and matters ancillary to a Collective Bargaining Agreement and bind each Player Member to such Collective Bargaining Agreement or in respect of such ancillary matters …

AFLPA membership

15. According to rule 5 of the AFLPA Constitution:

- Members in the Player Members class are Players who are eligible to be admitted as a Player Member, have been admitted to this class under rule 5.6 and who remain Members in this class. The eligibility requirement includes that the person is registered with a Club.
- Members in the Past Player Members class are Past Players who are eligible to be admitted as a Past Player Member, have been admitted to this class under rule 5.6 and who remain Members in this class. The eligibility requirement includes that the person is a Past Player.

Collective bargaining agreement

16. The AFL (as the controlling body of the AFL Competition and AFLW Competition) and the AFLPA have entered into a collective bargaining agreement (CBA) for the period 1 November 2022 to 31 December 2027 applicable to AFL Players and AFLW Players.

17. The CBA is a successor CBA that supersedes the 2017–2022 AFL CBA and the 2019–2022 AFLW CBA.

18. The AFL has the power to bind Clubs to the CBA and the AFLPA is the representative body of Players participating in the AFL Competition and the AFLW Competition.

19. The CBA is an agreement between the AFL and the AFLPA which, in accordance with clause 2(a) of the CBA, applies to:

- the AFL
- the AFLPA
- each Club, and

- each Player employed by a Club.

20. 'Player' is defined in the CBA to mean 'AFL Player and/or AFLW Player'.

21. 'Club' is defined in the CBA as 'a club licensed by the AFL to field a team in the AFL or AFLW Competitions'.

22. Each AFL Player and AFLW Player enters into a Standard Playing Contract with their applicable Club. The Players agree to the terms of, and are bound to, the CBA by virtue of each Player entering into a Standard Playing Contract. The AFLPA is not a party to that employment contract.

23. Clause 11 of the CBA provides for Player Development. Clause 11.1(a) states that the Parties agree to re-establish the AFL Industry Governance Committee for Player Development (IGC) within 6 months of the execution of the CBA.

24. Clause 11.1(c) of the CBA relevantly states that the purpose of the IGC is to:

(i) ensure a consistent approach to player development throughout the Player lifecycle in AFL and AFLW;

(ii) assume responsibility for the development, delivery and ultimate accountability for player development across the Clubs and AFL industry;

(iii) determine the overall industry position, key performance indicators and strategy for player development in AFL and AFLW (Industry Strategy);

(iv) develop a curriculum for player education and development in AFL and AFLW (Player Education and Development Curriculum) that will inform the baseline delivery of services;

(v) determine how the funding for Player development programs will be allocated in any year, subject to the terms of this Agreement;

(vi) endeavour to ensure each of the Clubs provide Player development opportunities to its AFL and AFLW Players that meet the key performance indicators and strategy objectives determined by the IGC; …

25. Clause 11.1(g) of the CBA states that the AFL will pay to the AFLPA the amount set out in item 4 of Schedule 3 of the CBA to fund player development programs and services provided by the AFL, a Club or Clubs, or the AFLPA. The AFLPA will hold the funding in a specific account (separate from the AFLPA's other funds) and apply such funding as directed by the IGC provided that any program or service will only be funded if it is consistent with the Industry Strategy.

26. Clause 11.2(a) of the CBA states that:

> Each AFL Club shall employ a fully qualified Player Development Manager for each of its AFL football program and AFLW football program on hours equivalent to the program requirements for each program. The Clubs must advise their Players and the AFLPA of such appointments.

27. Under clause 4 of Schedule 3 of the CBA the AFL will provide the funding to the IGC to be administered in accordance with clause 11 of the CBA payable for the year commencing 1 November 2022 and each subsequent year as follows:

(a) for the year commencing 1 November 2022, by way of 4 equal instalments, on 15 November 2022, 15 February 2023, 15 May 2023 and 15 August 2023, and

(b) for the remaining years of the Term, by way of 3 equal instalments on or before 28 February, 31 May and 31 August in each year:

Table 1: IGC funding for 2023 and subsequent years

Year	2023	2024	2025	2026	2027
Player Development	$3,100,000	$4,300,000	$4,500,000	$5,100,000	$5,300,000

Education and training grants

28. In fulfilment of the AFLPA's functions and goals, the AFLPA have established, and funded, an Education and Training Grant Program to provide Members with opportunities to enhance their education, training, personal development and welfare.

29. Part of the AFL's contribution to the AFLPA to assist with Player Development is utilised in providing Members with Education and Training Grants.

30. The AFLPA awarded the following number of Grants in 2022:

- Player Members (AFL) – 263
- Player Members (AFLW) – 140
- Past Player Members (AFL) – 282
- Past Player Members (AFLW) – 78

31. The Grant is available for course fees and student fees. Textbooks and tuition will also be covered within the grant limits.

32. The Grant does not cover items such as stationery, calculators, general equipment, parking permits, library fines or late fees.

Eligibility

33. To be eligible to receive a Grant (as an Eligible Member):

- an applicant must be a current Member of the AFLPA and must satisfy one of the following
  - is currently contracted with a Club and are permanently on the Primary or Rookie List of a Club, or
  - is a Past Player that was Primary or Rookie Listed and who was a Member of the AFLPA in the last year they played in the AFL or AFLW. Such applicants are eligible to access the Grant up to 3 times over a 5-year period
- an applicant must be currently enrolled in the approved course or eligible to enrol in the course, and
- the course undertaken must be accredited with a registered training or educational institution.

34. Eligible Members who are also employees of the AFLPA can access an annual Grant, in line with the eligibility criteria.

35. Non-member AFLPA employees are not eligible to receive a Grant.

Status: **legally binding**

Payment

36. The Education and Training Grant Program Funding Guidelines provide that the following amounts in Table 2 are available:

Table 2: Course funding guide

Short Course	$715
Certificate 1–3	$825
Certificate 4	$1,100
Professional Qualification	$1,430
Aviation	$2,400
Diploma or Advanced Diploma	$2,860
Graduate Certificate or Diploma	$3,575
Bachelor	$3,575
University – Postgraduate or Masters	$4,290

37. Grants will be capped to a maximum of $4,300 per year.

38. All Grants are subject to the approval of the Education and Training Grant Approvals Committee. The Committee determines Grants based on the guidelines provided, the number of total successful applicants and the amount of funding available in each year.

39. Payment of the Grant relies solely on the recipient of the Grant providing a receipt or invoice for the amount claimed. The Grant application must be made by 15 January each year. The reimbursement is then made in February in each financial year.

40. Reimbursements will only be made upon receiving a receipt for the claimed amount of legitimate educational expenses from an accredited education institution and confirmation of successfully passing the subject. Short course payments are made on evidence of satisfactory completion of the course by the recipient of the Grant and a dated receipt or invoice.

41. 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.

Commissioner of Taxation
10 January 2024

Status: **not legally binding**

Appendix – Explanation

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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Grant is not included in assessable income

42. 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

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

44. 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.

45. 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.

46. 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

[1] [1990] HCA 25.
[2] *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65 (*Dixon*).

services rendered by, the recipient.[3] Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.[4]

47. 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 considered[6] and the motive of the payer may be relevant to this consideration.[7]

48. 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.*[8], 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.

49. An Eligible Member 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.

50. The Grant is for payment of 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 Member or reimbursement to a third party.

51. 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 or course. The Grant period does not extend beyond one year unless further applications are made and approved.

52. The payments made under the Education and Training Grant Program may take the form of a lump sum as a predetermined expense.[9] 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.

53. These factors, when considered together, lead to the conclusion that the amounts received by the Members under the Education and Training Grant Program are not ordinary income under subsection 6-5(1).

54. 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.

[3] *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21, *Commissioner of Taxation of the Commonwealth of Australia v Rowe, Anthony John Poulston* [1995] FCA 834.
[4] *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65, per Fullagar J.
[5] *Scott v Federal Commissioner of Taxation* [1966] HCA 48 (*Scott*), *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21, *Federal Coke Company Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1977] FCA 29.
[6] *Squatting Investment Co Ltd v Commissioner of Taxation* [1953] HCA 13.
[7] *Scott*.
[8] *The Commissioner of Taxation of the Commonwealth of Australia v Harris, G.O.* [1980] FCA 74.
[9] *Commissioner of Taxation of the Commonwealth of Australia v Ranson, E.L.* [1989] FCA 741, per Davies and Hill JJ.

Status: **not legally binding**

Statutory Income

55. 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.

56. 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.

57. 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 …

58. An amount received by an Eligible Member under the Education and Training Grant Program will be statutory income under section 15-2 if it is provided in respect of, or for or in relation directly or indirectly to, any employment or services rendered by the Eligible Member.

59. As explained in paragraphs 62 to 84 of this Ruling relating to fringe benefits tax:

- there are similarities between the meaning of 'in respect of employment' in the context of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA and 'in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by you' in the context of former paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936), which section 15-2 has now replaced, and
- it is in their capacity as Members of the AFLPA in which Players receive the Grant, and not because of their employment relationship with a Club.

60. As such, it is accepted that the amounts received by Members under the Education and Training Grant Program will not be assessable income by the operation of section 15-2.

61. Statutory income can include net capital gains under subsection 102-5(1). There are no capital gains tax consequences as a result of a Member receiving an amount under the Education and Training Grant Program.

Grant is not a fringe benefit

Grant is an expense payment benefit

62. Generally a fringe benefit[10] is provided when a benefit is provided in respect of the employment of an employee to that employee (or their associate) by:

- their employer
- an associate of their employer
- a third party under an arrangement with their employer that comes within paragraph (e) of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA, or

[10] Refer to the definition of fringe benefit in subsection 136(1) of the FBTAA. There are exclusions in paragraphs (f) to (s) of the definition of fringe benefit, for example, salary and wages are excluded by paragraph (f), and exempt fringe benefits are excluded by paragraph (g).

- a third party where their employer (or an associate) participates in or facilitates the provision or receipt of the benefit in a manner that comes within paragraph (ea) of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA.

63. It can be accepted under the scheme that:

- because the AFLPA reimburses certain costs associated with education and training incurred by a Player by way of the Grant, the AFLPA provides an expense payment benefit to Players[11]
- *Spriggs v Commissioner of Taxation*[12] is the authority which supports the conclusion that there is an employment relationship between the relevant Club and the Player
- the Club, as the employer, does not directly provide the Grant to Players
- the AFLPA is not an associate of the relevant Club for the purposes of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA, and
- paragraph (e) of the definition of 'fringe benefit' in subsection 136(1) of the FBTAA does not apply because the allocation of funds to the Players is determined by the AFLPA, rather than by an agreement entered into between a Club (or an associate) and the AFLPA.

64. Importantly, paragraph (ea) of the definition of 'fringe benefit' does not require the provider[13] of the benefit to be the employer.

65. Subparagraph (ea)(ii) of the definition of 'fringe benefit' will apply where an employer (or an associate) participates in, facilitates or promotes a scheme or plan involving the provision of the benefit and knows, or ought reasonably to know, that they're doing so.

66. Under the scheme, the funds used to provide the Grants are provided by the AFL to the AFLPA under the terms of the CBA. The CBA is an agreement negotiated between the AFL (on behalf of the Clubs) and the AFLPA (on behalf of the Players). The CBA applies to each Club which is bound to the agreement by the AFL. As set out in the decision in Spriggs, the CBA is incorporated into the contract between the Club and the Player.

67. The incorporation of the CBA (which provides for the establishment of the Education and Training Grant Program) into the contract between the employer (the Club) and the employee (the Player), and the binding nature of the CBA on the Clubs, are factors that indicate the employer participates in the scheme or plan (being the Education and Training Grant Program) under which the benefit (being the Grant as a reimbursement) is provided.

68. It is also considered that the Clubs provide some support to the Players participating in the Education and Training Grant Program through their Player Development Managers and each Club has a Player Development Manager.

69. While it is acknowledged that the AFLPA is responsible for the administration of the Education and Training Grant Program, and for assisting Players in the application process, the Player Development Manager provides ongoing support to the Players over

[11] Section 20 of the FBTAA provides that where a provider reimburses expenditure of another person (the recipient) the reimbursement will constitute the provision of a benefit by the provider to the recipient.
[12] *Spriggs v Commissioner of Taxation* [2009] HCA 22 (Spriggs) at [43] where it was concluded that the AFL Standard Playing Contract was a contract of employment, although the Court also concluded that it was not solely a contract of employment.
[13] *'Provider'* is defined in subsection 136(1) of the FBTAA to mean 'the person who provides the benefit'.

the course of their studies, and this is demonstrated through the development and implementation of the Player Education and Development Curriculum. This is further evidence that the Clubs, as the employer, participate in, facilitate or promote the Education and Training Grant Program.

70. Given the ongoing support provided by the Clubs to Players participating in the Education and Training Grant Program, and the incorporation of the CBA into the contract between the Club and the Player, the Clubs, as the employer, know, or ought to reasonably be expected to know they are participating in, facilitating or promoting the scheme or plan under which the Grant is provided.

71. As such, paragraph (ea) of the definition of fringe benefit in subsection 136(1) of the FBTAA does apply to the scheme and the Clubs.

72. Thus, the provision of the Grant will be an expense payment fringe benefit that is subject to fringe benefits tax if it can be established that the Grant is provided in respect of the employment of an employee, in this case being the Player.

Grant is not 'in respect of the employment'

73. The term 'in respect of', in relation to the employment of an employee, is defined in subsection 136(1) of the FBTAA to include 'by reason of, by virtue of, or for or in relation directly or indirectly to, that employment'.

74. The meaning of 'in respect of employment' in the context of the FBTAA was considered in *J & G Knowles v Commissioner of Taxation*[14], where the Full Federal Court concluded that there must be a 'sufficient or material, rather than a, causal connection or relationship between the benefit and the employment'.[15]

75. The similarity of the phrase 'in respect of' with former paragraph 26(e) of the ITAA 1936 was noted in *Starrim Pty Ltd v Commissioner of Taxation*[16]:

> … The concluding words of that definition ('for or in relation directly or indirectly to, that employment') are more general. But the same words occurred in the expression 'in respect of, or in relation directly or indirectly to any employment' in s 26(e) of the ITAA36 that was considered by the High Court in *Smith v Federal Commissioner of Taxation*. I think that they should be understood conformably with the expressions 'by reason of' and 'by virtue of' in the definition in subs 136(1) of the Act.

76. In *Payne, Janet Lynn v Commissioner of Taxation*[17] the words 'for or in relation directly or indirectly to, any employment' in former paragraph 26(e) of the ITAA 1936 were considered. In concluding that the value of airline tickets received as part of a frequent flyer program were not assessable income, the Federal Court concluded that:

> The benefit was received under a scheme instituted by Qantas for its benefit. The employer had no part in the scheme as such. The employer did not arrange for the employee to participate in the scheme. It did not pay for the employee's participation in the scheme. It did not even, so far as the facts show, encourage its employees to participate in the scheme. It did nothing to provide the benefit alleged to be taxable in the employee's hand.

77. Also in *Payne* it was said[18]:

> In my view, s 26(e) clearly requires that the relevant benefit be given or granted by the donor or granter in view of the taxpayer's employment by himself or some other employer. Although

[14] *J & G Knowles v. Commissioner of Taxation* [2000] FCA 196 (*Knowles*).
[15] *Knowles* at [26].
[16] *Starrim Pty Ltd v Commissioner of Taxation* [2000] FCA 952 at [46].
[17] *Payne, Janet Lynn v Commissioner of Taxation* [1996] FCA 347 (*Payne*).
[18] Per Foster J.

> questions of motive may not require any close examination, in my opinion, the section, nevertheless, requires a recognition on the part of the donor or granter of the relationship between the benefit granted, and the employment of the donee or grantee taxpayer. In other words the employment must be either wholly or partly the reason for the donor or granter making the gift or the grant. It is for that reason that, in my view, the university prize referred to in the example postulated above would not be taxable. It would not be awarded to the recipient because of her employment by the firm which had required and paid for her participation in the course. Likewise, in the present case, Qantas provided the free ticket not because of Payne's employment with KPMG, but because she had become entitled to it under Qantas' own scheme.

78. Also relating to former paragraph 26(e) the Federal Court stated in *McArdle, J.W. v The Commissioner of Taxation for the Commonwealth of Australia*[19] that:

> In my opinion the passages cited indicate clearly that it is necessary to go beyond the historical or temporal connection which had existed or presently existed between an employer and an employee. It is necessary to consider whether the taxpayer received the payment in any capacity other than that of employee, whether there was any consideration other than services rendered or to be rendered, and whether it could be said that the payment was in consequence only of the employee's service or of some other consideration.

79. In the context of the Education and Training Grant Program, it cannot be ignored that a significant eligibility criteria for the Grant is current (or recent past) employment with a Club. There is recognition on the part of the AFLPA, as the provider of the benefit, of the employment relationship between the Player and the Club and in this sense, it could be said that this employment relationship is partly a reason for payment of the Grant.

80. In contrast, a Player can be a current or former Player without being a Member of the AFLPA, but they cannot access the Education and Training Grant unless they are a Member of the AFLPA. At the time that the amount is provided, it is the Player's membership of the AFLPA, either at that time, or in the case of a Past Player in their last year of playing AFL football, that gives the Player access to the Grant. It is not their employment with their Club that gives them access to the Grant.

81. Applying the Federal Court's reasoning in *Payne*, the AFLPA recognises the Player's membership of the AFLPA when providing the Grant and their employment by a Club is just one of a number of factors. It is the contractual right of the Player associated with their membership of the AFLPA which ultimately gives rise to the Grant because without this relationship, there can be no Grant.

82. Therefore, it is considered that the Player's membership of the AFLPA is the capacity in which the Player receives the Grant and the Grant is ultimately a consequence of their contractual rights as a Member of the AFLPA rather than their employment relationship with a Club.

83. Similarly, in respect of Eligible Members who are also employed by the AFLPA, benefits received by these Members under the Education and Training Grant Program would be in respect of their membership with the AFLPA as a Past Player, and not 'in respect of employment'.

84. As such, the Commissioner accepts that the amounts provided to Members under the Education and Training Grant Program do not have a sufficient or material connection with current or previous employment of the Member with a Club to be 'in respect of employment' and, therefore, they do not fall within the definition of 'fringe benefit' in subsection 136(1) of the FBTAA.

[19] *McArdle, J.W. v The Commissioner of Taxation for the Commonwealth of Australia* [1988] FCA 93.

Status: **not legally binding**

References

Previous Rulings/Determinations:

CR 2011/91; CR 2015/84; CR 2020/5; CR 2020/23

Legislative references:

- ITAA 1936 former paragraph 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
- ITAA 1997 15-2(1)
- ITAA 1997 102-5(1)
- FBTAA 1986 20
- FBTAA 1986 136(1)
- Corporations Act 2001

Cases relied on:

- Commissioner of Taxation (Cth) v Dixon [1952] HCA 65; 86 CLR 540; [1953] ALR 17; 10 ATD 82; 26 ALJR 505
- Commissioner of Taxation of the Commonwealth of Australia v Ranson, E.L. [1989] FCA 741; 89 ATC 5322; 20 ATR 1652; 90 ALR 533
- 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 ALJR 96
- J & G Knowles v Commissioner of Taxation [2000] FCA 196; 96 FCR 402; 2000 ATC 4151; 44 ATR 22
- McArdle, J.W. v The Commissioner of Taxation for the Commonwealth of Australia [1988] FCA 93; 88 ATC 4222; 19 ATR 985; 79 ALR 637
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