TR 1999/17 - Income tax: sportspeople - receipts and other benefits obtained from involvement in sport

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Taxation Ruling
Income tax: sportspeople - receipts and other benefits obtained from involvement in sport

Contents	Para
What this Ruling is about	**1**
Date of effect	**6**
Ruling	**8**
Explanations	**15**
Examples	**72**
Detailed contents list	**112**

Preamble

*The number, subject heading, **Class of person/arrangement**, **Date of effect** and **Ruling** parts of this document are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

What this Ruling is about

Class of person/arrangement

1. This Ruling discusses benefits received by individuals from involvement in sport. The Ruling sets out the Commissioner's view as to whether these benefits are assessable income under the *Income Tax Assessment Act 1936* (ITAA 1936) or the *Income Tax Assessment Act 1997* (ITAA 1997). Where a sportsperson is uncertain whether a receipt or benefit is assessable income they can request a Private Binding Ruling from the Australian Taxation Office.

2. In this Ruling benefits include: payments received (such as salary, wages, allowances and cash prizes) and benefits received in kind (such as prizes received in the form of a motor vehicle or holiday).

3. This Ruling does not discuss whether a sportsperson is an employee or if amounts received come within the extended scope of the PAYE system.

4. This Ruling applies to individuals who receive benefits through their involvement in sport. This may be either as a participant or as an official, such as a referee or coach.

5. The Ruling does not distinguish between an 'amateur' or a 'professional' sportsperson. These distinctions are not determinative for income tax purposes.[1]

[1] *Honey v. Australian Airlines Ltd & Anor* (1989) 14 IPR 264 at 266; [1989] ATPR 50,484 at 50,486; *Case T14* (1968) 18 TBRD (NS) 67; *Case 45* 14 CTBR (NS) 235 - refer comments of R E O'Neill (member) (at TBRD 73; CTBR 241).

Date of effect

6. This Ruling, with the exception of those situations listed below, applies to years of income commencing both before and after its date of issue. These exceptions are:

- this office has previously expressed a view that specific voluntary payments received by 'amateur' athletes from the Australian Sports Commission were not assessable income. It is accepted that these views contributed to a generally held view that like payments by similar non-profit and government bodies (this would include, for example, registered or licensed clubs and educational institutions), such as State institutes for sport, were not assessable income; and
- where this Ruling conflicts with previous advice given to a sportsperson by this office. Previous advice includes both advice given to him or her personally and advice given to an organisation representing sportspeople in his or her field of activity.

For sportspeople in the above circumstances this Ruling applies to payments received from the year of income commencing 1 July 2000.

7. Also, this Ruling does 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 the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Ruling

8. A payment or other benefit received by a sportsperson is 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**). Statutory income includes non-cash benefits that may not be ordinary income.

9. The following are assessable income:

- payments received from, in respect of, or in connection with employment;
- payments or other benefits received for, in respect of, or in connection with services provided; and

- amounts of a revenue nature or other benefits received, including prizes and awards, from carrying on a business of participating in sport. This includes the exploitation of personal skills in a commercial way for the purpose of gaining reward.

10. In contrast to the items listed in paragraph 9, money and other benefits received from the pursuit of a pastime or hobby are not assessable income. If follows that any related expenses are not allowable deductions from those receipts.

11. Payments to sportspeople that do not fall within any of the items listed in paragraph 9 are often made in the absence of any legal obligation of the payer to do so. Such payments are referred to as voluntary payments. Typically, voluntary payments are made as either a series of payments, such as under a grant, or as an 'occasional' payment, such as an award or prize. The fact that a payment is voluntary does not mean that it cannot be assessable income.

12. A payment which is received as a part of a series of voluntary payments, such as under a grant, will be assessable income in the ordinary sense of the word if it has one or more of the following characteristics:

(i) it is made under an agreement or arrangement to provide financial support in the form of periodical, regular or recurrent payments;

(ii) it is received in circumstances where the sportsperson has an expectation of receiving the payment as part of periodical, regular or recurrent payments, and the sportsperson is able to rely on the payment for his or her regular expenditure; or

(iii) it is part of periodic, regular or recurrent payments made in substitution of income.

Expenses of sports are not allowable deductions against voluntary payments, as these expenses do not relate to the voluntary payment received.

13. Whether the receipt of an 'occasional' voluntary payment or benefit is assessable income needs to be determined on a case by case basis. An 'occasional' voluntary payment received in relation to sporting activities is:

(i) considered to be assessable income if paid to the sportsperson in relation to an activity that can be considered to be income-producing eg. in respect of employment, the provision of services, or a business; or

(ii) not considered to be assessable income if not caught under subparagraph (i) above. Such payments are in the nature of a 'windfall gain'. This includes receipts incidental to a pastime or hobby, and 'occasional' voluntary payments paid and received on purely personal grounds.

14. An award in medal or trophy form will not be assessable income as it is given and received on purely personal grounds, recognising and recording a particular achievement of the person.

Explanations

Ordinary income

15. Under subsection 6-5(1) of the ITAA 1997 an amount is assessable income if it is income according to ordinary concepts (ordinary income).

16. In determining whether an amount is ordinary income, the courts have established the following principles:

- what receipts ought to be treated as income must be determined in accordance with the ordinary concepts and usages of mankind, except in so far as a statute dictates otherwise;[2]
- whether the payment received is income depends upon a close examination of all relevant circumstances;[3] and
- it is an objective test.[4]

17. Relevant factors in determining whether an amount is ordinary income include:

- whether the payment is the product of any employment, services rendered, or any business;[5]
- the quality or character of the payment in the hands of the recipient;[6]

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[2] *Scott v. FC of T* (1935) 35 SR (NSW) 215; (1935) 3 ATD 142 per Jordan CJ at SR 219; ATD 144.

[3] *The Squatting Investment Co Ltd v. FC of T* (1953) 86 CLR 570 at 627; (1953) 10 ATD 126 at 146.

[4] *Hayes v. FC of T* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73.

[5] *FC of T v. Harris* (1980) 43 FLR 36; 80 ATC 4238; (1980) 10 ATR 869 at FLR 40; ATC 4241; ATR 872; *Hayes v. FC of T* (1956) 96 CLR 47 at 54; (1956) 11 ATD 68 at 72.

- the form of the receipt, that is, whether it is received as a lump sum or periodically;[7] and
- the motive of the person making the payment. Motive, however, is rarely decisive as in many cases a mixture of motives may exist.[8]

Provisions relating to statutory income

18. Section 6-10 of the ITAA 1997 includes in assessable income amounts that are not ordinary income; these amounts are statutory income.

19. The provisions relating to statutory income provide for the money value of non-money benefits to be included in assessable income. An exception to this are benefits that are provided to employees in respect of their employment. Such benefits fall for consideration within the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and would usually be exempt income under section 23L of the *Income Tax Assessment Act 1936* (ITAA 1936). For sportspeople the three provisions of the ITAA 1936 that may apply are:

- paragraph 26(e), which provides that the assessable income shall include '... the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums allowed, given or granted to him in respect of, or for or in relation directly or indirectly to, any employment of or services rendered ...';
- section 21, which provides that where '... any consideration is paid or given otherwise than in cash, the money value of that consideration shall, for the purposes of this Act, be deemed to have been paid or given.' (section 21 is subject to section 21A); and
- section 21A, which provides that a benefit of property or services provided in respect of a business relationship is, in determining whether the benefit is income, deemed to be convertible to cash. The amount of income is the arm's length value of the benefit.

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[6] *FC of T v. Blake* 84 ATC 4661; (1984) 15 ATR 1006 - refer comments of Carter J (at ATC 4664; ATR 1010); *Scott v. FC of T* (1966) 117 CLR 514; (1966) 14 ATD 286 (at CLR 526; ATD 293); *GP International Pipecoaters Pty Ltd v. FC of T* (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1 (at CLR 136; ATC 4419; ATR 6).

[7] *FC of T v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82 (at CLR 557; ATD 86).

[8] *Hayes v. FC of T* (1956) 96 CLR 47; (1956) 11 ATD 68 (at CLR 55; ATD 72-73).

Income and benefits received by an employee

20. The relationship between an employer and an employee is a contractual one. Whether a sportsperson is an 'employee' must be considered from the totality of the relationship.[9]

21. Payments which are assessable income include salary, wages, bonuses, allowances, sign-on fees[10], inducement or retention payments for continuance of service[11], termination payments, cash prizes and cash awards. Payments received from public appearances, product promotions and endorsements, if received in connection with an employment contract, are also assessable income.

22. Payments mentioned in the preceding paragraph are assessable income whether they are paid by the employer, or by a third party to the sportsperson in the sportsperson's capacity as an employee[12]. If a sportsperson directs that the payment is made to a third person, the payment remains assessable to the sportsperson. Also, an amount received from a third party by the employer for the purpose of rewarding an employee will be assessable income[13]of the employee when received by the employee.

23. Generally, non-cash benefits provided:

- to an employee sportsperson, or an associate of an employee sportsperson,
- by the employer, or an associate of the employer, or by a third party under an arrangement with the employer,
- in respect of the sportsperson's employment,

are fringe benefits under the FBTAA and are not assessable income due to section 23L of the ITAA 1936. Miscellaneous Tax Ruling MT 2032 discusses the application of the FBTAA to sporting clubs.

24. Where a payment is received for a public appearance, product promotion, prize or endorsement as a direct result of the employee's employment, although not under an arrangement with the employer or an associate of the employer, it is assessable income. In *Kelly v. FC*

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[9] *Stevens v. Brodribb Sawmilling Company Pty Ltd* (1986) 160 CLR 16; (1986) 60 ALJR 194; refer comments of Mason J (at CLR 29; ALJR 198) and Wilson and Dawson JJ (at CLR 39; ALJR 203).

[10] *Reuter v. FC of T* (1993) 111 ALR 716 at 730; 93 ATC 4037 at 4047; 24 ATR 527 at 540 and Income Tax Ruling IT2307.

[11] *Dean & Anor v. FC of T* 97 ATC 4762; (1997) 37 ATR 52; Case Y53 91 ATC 464; AAT Case 7422 (1991) 22 ATR 3450.

[12] *Dean & Anor v. FC of T* 97 ATC 4762 at 4769; (1997) 37 ATR 52 at 60; *Reuter v. FC of T* (1993) 111 ALR 716 at 730; 93 ATC 4037 at 4047; 24 ATR 527 at 540.

[13] *Newcastle Club Limited v. FC of T* (1994) 53 FCR 1; 94 ATC 4594; 29 ATR 216.

of T[14] an employee of a football club received a $20,000 award from an unrelated party for being voted the best and fairest player for the season. In that case, Franklyn J held that the amount was assessable income of the sportsperson because it was directly related to his employment as a footballer.

Income for services provided outside of employment

25. The provision or rendering of services consists of the doing of an act for the benefit of another, which is more than the mere making of a contract and which goes beyond the performance of an obligation undertaken in the course of an ordinary commercial contract[15]. Accordingly, a sportsperson will only be providing a service where they are undertaking an activity for the benefit of another party; usually this will be the payer. The provision of services includes, for example, the performing of specific administrative, technical or promotional services of direct benefit for the payers. Such payments are typically 'tied to' and 'based on' activities undertaken, or hours spent performing duties, that produce objective and tangible (often monetary) benefits for the payer.

26. Amounts received for, in respect of, or in connection with[16] services rendered by a sportsperson are assessable income even if no employer/employee relationship exists with the payer, or there is no carrying on of a business[17] (**Example 6**).

27. Income includes payments, prizes and awards received in connection with services provided. Also included are receipts incidental to the services provided. The value of non-monetary benefits becomes assessable income through the operation of paragraph 26(e) of the ITAA 1936.

28. Where a sportsperson is entitled to receive an amount for services rendered and the amount is received by another person on behalf of, or at the direction of the sportsperson the amount is assessable income of the sportsperson (subsection 6-5(4) of the ITAA 1997). Such an amount would include payment to a trustee for the benefit of the sportsperson (refer paragraph 5 of Taxation Ruling IT 2262) or payment to an associate or relative of the sportsperson.

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[14] *Kelly v. FC of T* 85 ATC 4283; (1985) 16 ATR 478.

[15] *Revesby Credit Union v. FC of T* (1965) 112 CLR 564 at 578

[16] *FC of T v. Holmes* (1995) 58 FCR 151; 95 ATC 4476; 31 ATR 71; *Brent v. FC of T* (1971) 125 CLR 418; 71 ATC 4195; (1971) 2 ATR 563

[17] *Brent v. FC of T* (1971) 125 CLR 418; 71 ATC 4195; (1971) 2 ATR 563.

Income from business activities

29. Amounts of a revenue nature received from carrying on a business of participation in sport are assessable income to the sportsperson (**Example 1**). A business of participating in sport includes:

- the commercial exploitation of skills developed as a pastime or hobby; and
- the commercial exploitation of skills developed and used in the pursuit of sporting excellence.

Both situations above will result in sport becoming a taxpayer's vocation or calling and therefore a business (see definition of 'business' in section 995-1 of the ITAA 1997). A sportsperson's business could also involve the commercial exploitation of his or her 'public fame' or 'image'. Typically, commercial exploitation will involve an individual utilising his or her skills in a systematic, regular and/or organised manner with a view to obtaining assessable income. This is despite the fact that many of the usual indicators of a business are absent, eg., a business structure, business premises, employees or trading stock. A sportsperson will not be carrying on a business in respect of his or her sporting activities merely because he or she is utilising his or her skills in a systematic, regular and organised manner unless he or she is doing so for the purpose of commercially exploiting those skills.

30. Amounts of a revenue nature include any payments of prizes, awards or benefits that are received as a result of carrying on the business. The value of non-cash prizes or awards is included in assessable income through the operation of section 21 or section 21A of the ITAA 1936.

31. Whether an activity is a business is a matter of fact. Whether a person is carrying on a business can only be determined by considering all the relevant facts and circumstances. Similarly, as business includes the exploitation of personal skills in a commercial way for the purpose of gaining reward, it is necessary to consider all relevant facts surrounding amounts received from the pursuit of sporting excellence (**Example 10**). For a fuller discussion of whether a particular activity constitutes carrying on a business or a hobby, refer to Taxation Ruling TR 97/11 (also see ATO publication 'Am I in business?'[18]). The Ruling deals with carrying on a primary production business; however, the principles discussed in the Ruling apply to any set of operations.

[18] NAT 2598-4.1998

Receipts incidental to a pastime

32. Where a person's sporting 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 are not assessable income, nor are the expenses allowable deductions.[19]

33. Participation in activities generating pastime or hobby receipts is a social or personal pursuit of a non-commercial nature.[20] Pastime receipts are not intended to, nor do they usually, cover expenses. Even regular receipts obtained from a pastime or hobby are still characterised as receipts from a pastime or hobby and accordingly are not assessable income (**Example 7**). A receipt that is an incident of a pastime or hobby would also not be assessable, even if it arises from the provision of a service (**Example 5**). However, the nature of such a receipt or receipts is relevant in determining whether the pastime has become a business. The receipt or receipts could indicate, for example: a commercial activity; an intention to make a profit from the activity; or an increase in either the size and scale of the activity or the degree of repetition or regularity of the activity.

34. Even though a person is engaged in a hobby, a receipt can still constitute income according to ordinary concepts; for example, receipts for the provision of services if not received in respect to the actual hobby activity itself[21] (**Example 6**). Whether an activity is an incident of a hobby or is separate from the hobby is a matter of fact that will depend upon the circumstances of each case.

Voluntary payments

FC of T v. Dixon

35. The issue of whether voluntary payments are income in the hands of the recipient was considered by the High Court in *FC of T v. Dixon*.[22]

36. Mr Dixon had been employed as a clerk for a shipping agent. In 1940 he voluntarily enlisted for service in the Australian Imperial Forces and he continued to serve in the armed forces until his

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[19] *Martin v. FCT* (1953) 90 CLR 470; (1953) 10 ATD 226; [1953] ALR 755 (at CLR 479; ATD 228; ALR 757).

[20] *Martin v. FCT* (1953) 90 CLR 470 at 481; (1953) 10 ATD 226 at 230; [1953] ALR 755 at 758; *Case Z16* 92 ATC 183; *AAT Case 7839* (1992) 23 ATR 1115; *Case C18* 71 ATC 77 at 79; *Case 15* 17 CTBR (NS) 90 at 93-94; *Case T58* (1968) 18 TBRD (NS) 306; *Case 75* 14 CTBR (NS) 432.

[21] *Case Q4* (1964) 15 TBRD 9; *Case 100* 11 CTBR (NS) 585.

[22] *FC of T v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82.

discharge in 1945. In 1946 he returned to work for his former employer.

37. At no time had Mr Dixon given any undertaking that he would return to the former employer upon completion of his war service, nor had the former employer given him any undertaking that it would re-employ him. Nevertheless, during the period of the taxpayer's war service, the former employer continued to pay him a sum of money equal to the difference between the rate of his military pay and the rate of pay he had received at the time of his enlistment in 1940.

38. The High Court held that the voluntary payments made by the former employer to Mr Dixon during the period of his war service were income in the ordinary sense of the word. The 'circumstances' in which Mr Dixon entered the war service, as outlined above, were such that he was able to rely with confidence on receiving the periodic payments from his former employer.

39. Dixon CJ and Williams J regarded four factors as relevant in reaching the conclusion that the payments were income:

(i) the payments were regular and periodical;

(ii) the payments arose out of circumstances attending Mr Dixon's war service;

(iii) the payments formed part of the receipts that Mr Dixon depended upon for regular expenditure for himself and his dependants; and

(iv) the payments were made for that purpose.

40. Fullagar J also held that the payments were income, on the basis of the expected regularity of the receipts and the fact that the payments were made in substitution for the salary and wages Mr Dixon would have earned had he not enlisted.[23] The payment accordingly acquired the characteristics of the payment for which it was substituted.

41. In applying the principles from the joint judgement of Dixon CJ and Williams J in *Dixon's case*, White J in *Keily's*[24] case said (at ATC page 4249; ATR page 158) that:

> 'In the case of an aged person's pension, the generally accepted characteristics of income (recurrence, regularity and periodicity) are present. In addition, the pensioner has a continuing expectation of receiving periodic payments, an expectation arising out of established government policy with respect to the support and welfare of aged citizens. Pension

[23] *FC of T v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82 (at CLR 568; ATD 92).

[24] *Keily v. FC of T* 83 ATC 4248; (1983) 14 ATR 156

> payments form part of the receipts upon which a pensioner depends for support. And a pension is paid to the pensioner for that purpose. A pensioner therefore satisfies the criteria or characteristics of income discussed in *Dixon's* case.'

42. In the *Squatting Investment Co Ltd v. FC of T* (1953) 86 CLR 570; (1953) 10 ATD 126 Webb J stated (at CLR page 613; ATD page 137):

> 'In FCT v Dixon this court held that gifts that were not derived from such sources [ie employment, provision of services or carrying on a business] were nevertheless income under s25. That was because they were periodical and were for the maintenance of the donee and his dependants. That case indicates that even such undoubted personal gifts as charitable payments made eg. to a pauper in a hospital or other institution for his maintenance therein are income within s25. They are not income from personal exertion or from property, apart from the statutory definitions, but they are still to be regarded as income within the ordinary meaning of the term.'

43. Although the decision of the High Court in *Squatting Investment Co Ltd v FC of T* was later overturned by the Privy Council ((1954) 88 CLR 413; 10 ATD 36) the above comments of Webb J were not disturbed.

Subsequent court decisions

44. Subsequent court decisions have confirmed and further defined the extent of the principles arising from *Dixon's* case. These cases show that:

- to determine if a voluntary payment is income, a broad judgement must be made of all the circumstances in each particular case. There is no fixed set of criteria against which a particular receipt has to be measured;[25]
- the form of a receipt is an important factor in determining whether a receipt is income; however, form on its own will seldom determine the issue;[26] and
- scholarships will be income (unless specifically exempted from assessable income under paragraph 23(z) of the ITAA 1936).[27]

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[25] *FC of T v. Blake* 84 ATC 4661; (1984) 15 ATR 1006 - refer comments of Carter J (at ATC 4664; ATR 1010).

[26] *FC of T v. Hyteco Hiring Pty Ltd* 92 ATC 4694; (1992) 24 ATR 218 - refer to comments of Hill J (at ATC 4700; ATR 224).

Voluntary payments: Financial grants

45. Often voluntary payments are paid as financial grants. Typically, such payments are not a product of, or received in respect of, any employment, services rendered, or any business. They are paid to a sportsperson by another party when the sportsperson has attained a specific standard. Sportspeople selected to receive a grant possess personal qualities and athletic abilities that show they are in a class of individuals able to pursue sporting excellence.

46. The sportsperson enters into the arrangement with the other party who undertakes to provide payments to the sportsperson on a periodic and regular basis while the sportsperson continues to perform at the required standard. Often the arrangement expressly states that payments are made at the 'absolute discretion' of the payer.

47. The arrangements between the payer and the sportsperson often contain clauses governing conduct and behaviour of the sportsperson, which, if breached, may result in the termination of the agreement.

Voluntary payments that are considered to be income

48. Although there are no fixed criteria, the decisions of the courts show that voluntary payments, such as under a grant, made to a sportsperson are income where they are:

(i) made under an agreement or arrangement to provide financial support in the form of periodic, regular or recurrent payments;

(ii) received in circumstances where the sportsperson has an expectation of receiving the payments as part of periodic, regular or recurrent payments, and the sportsperson is able to rely on the payment for his or her regular expenditure; or

(iii) part of periodic, regular or recurrent payments made in substitution of income.

The quality or character of such voluntary payments, in the hands of the sportsperson, is assessable income.

49. Such voluntary payments arise out of the circumstances of the sportsperson's involvement in sport and the fact they meet certain eligibility criteria eg., they are in a class of individuals able to pursue sporting excellence. The sportsperson is able to reasonably rely on continuing to receive the periodic payments, while satisfying the

[27] *FC of T v. Ranson* 89 ATC 5322; (1989) 20 ATR 1652 - refer comments of Davies and Hill JJ (at ATC 5327; ATR 1658).

obligations to the payer. The payments also form part of the receipts that can be depended upon to meet regular expenditures. As discussed in paragraph 28, a financial grant made on behalf of, or at the direction of the sportsperson would also be assessable income of the sportsperson.

50. It is therefore considered that, in cases meeting the criteria listed in paragraph 48, grants paid to a sportsperson constitute assessable income (**Example 2**).

Sporting expenditure where a sportsperson is in receipt of 'voluntary payments'

51. For expenditure to be deductible there must be a nexus between the expenditure and the assessable income so that it is incidental and relevant to the gaining of the assessable income[28]. The expenditure must also have the essential character of an outgoing incurred in gaining assessable income or, in other words, of an income-producing nature[29].

52. Voluntary payments are in the nature of assistance which may be available to an individual pursuing sporting excellence: that is, they are an incident of sport. They enable a sportsperson to live while continuing with his or her sporting activities. Rather than being a product of the sporting activity, the voluntary payments are assessable income because the criteria outlined in paragraph 48 are satisfied. Despite entering into an agreement containing conditions governing performance standards, conduct and behaviour of the sportsperson, it is our view, based on the terms of the agreements we have perused, that the sportsperson has not entered into a contract to render services; similarly, the arrangement does not amount to an employment relationship. This is because the activities undertaken are not services for another or the carrying on of a business. Rather they are activities for the sportsperson's own benefit and development. They are undertaken for the purpose of achieving sporting excellence, developing personal qualities and athletic abilities.

53. As voluntary payments are not a product of employment, services or a business, viewed objectively, sporting expenditure is not incidental and relevant to the gaining of the voluntary payment. Such expenditure does not have the essential character of producing the payments; rather, the expenditure is for the sportsperson's own benefit and development. It is incidental and relevant to the activities of the sport the sportsperson undertakes. The essential character of the expenditure is related to the pursuit of sporting excellence and

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[28] *Ronpibon Tin N.L. v. FC of T* (1949) 78 CLR 47 at 56

[29] *Lunney v. FC of T* (1958) 100 CLR 478 at 497 and 499

qualifying a sportsperson into a class of individuals which meets the criteria for receiving voluntary payments. Accordingly, expenses of sport are not allowable deductions, under section 8-1 of the ITAA 1997, against voluntary payments.

Non-monetary benefits received in relation to 'voluntary payments'

54. Non-monetary benefits become assessable through the operation of either paragraph 26(e), section 21, or section 21A of the ITAA 1936, which require that the benefit be related to employment, services or a business. Where a sportsperson receives a non-monetary benefit that is not convertible and non-transferable and it is solely related to a voluntary payment, the benefit will not be assessable income. (**Example 2**).

'Occasional' voluntary payments

55. There may be situations where an 'occasional' voluntary payment, such as an award or prize, is received by a sportsperson. Whether the receipt of an 'occasional' voluntary payment is assessable income needs to be determined on a case by case basis.

56. As well as the general principles and factors outlined in paragraphs 16 and 17, other relevant factors also need to be considered. These factors include:

- how and why it came about that the payment or gift was made;[30]
- whether the payment or gift is of a kind which is a common incident of the recipient's calling or occupation;[31] and
- whether the payment or gift is solicited.[32]

57. In *Hayes v. FC of T*[33] Fullagar J, when discussing whether a single voluntary payment was income, stated that:

> 'The question in each particular case is as to the character of the receipt in the hands of the recipient'.

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[30] *The Squatting Investment Co Ltd v. FC of T* (1953) 86 CLR 570; (1953) 10 ATD 126 per Kitto J (at CLR 627-628; ATD 146).

[31] *Scott v. FC of T* (1966) 117 CLR 514; (1966) 14 ATD 286 (at CLR 526; ATD 293).

[32] *Scott v. FC of T* (1966) 117 CLR 514; (1966) 14 ATD 286 (at CLR 526; ATD 293); *FC of T v. Harris* (1980) 43 FLR 36; 80 ATC 4238; (1980) 10 ATR 869.

[33] *Hayes v. FC of T* (1956) 96 CLR 47 at CLR 55; (1956) 11 ATD 68 at 73.

58. In *Hayes,* Fullagar J quoted, with approval, the following passage from the judgement of Kitto J in the *Squatting Investment Case*[34]*:*

> 'The distinction those decisions have drawn between taxable and non-taxable gifts is the distinction between, on the one hand, gifts made in relation to some activity or occupation of the donee of an income-producing character...and, on the other hand, gifts referable to the attitude of the donor personally to the donee personally.'

59. In *FC of T v. Harris*[35] Bowen CJ said:

> 'A generally decisive consideration is whether the receipt is the product in a real sense of any employment of, or services rendered by the recipient, or of any business, or, indeed, any revenue producing activity carried on by him'

'Occasional' voluntary payments that are considered income

60. It is considered that an 'occasional' voluntary payment received in respect of[36] sporting activities is assessable income if the recipient is an employee, is engaged in the provision of services, or carries on a business in respect of those sporting activities.[37] Such payments are assessable even though they are in respect of past or future employment, the past or future provision of services, or a past business (**Example 4**).

'Occasional' voluntary payments that are not considered income

61. In most cases an 'occasional' voluntary payment made in respect of sporting activities but received in circumstances other than those outlined in paragraph 60, is not assessable income (**Example 10**). Such a payment is usually in the nature of a 'windfall gain'.

62. If an 'occasional' voluntary payment is received as an incident of a hobby or pastime it is not assessable income. This could also

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[34] *The Squatting Investment Co Ltd v. FC of T* (1953) 86 C.L.R. 570 at 633; (1953) 10 ATD 126 at 149

[35] *FC of T v. Harris* (1980) 43 FLR 36; 80 ATC 4238; (1980) 10 ATR 869 at FLR 40; ATC 4241; ATR 872

[36] *Smith v. FC of T* (1987) 164 CLR 513; 87 ATC 4883 - refer comments of Brennan J (at CLR 526; ATC 4890). Also refer Taxation Ruling IT 2674.

[37] *The Squatting Investment Co Ltd v. FC of T* (1953) 86 CLR 570; (1953) 10 ATD 126; *Hayes v. FC of T* (1956) 96 CLR 47; (1956) 11 ATD 68; *Scott v. FC of T* (1966) 117 CLR 514; (1966) 14 ATD 286; *FC of T v. Harris* (1980) 43 FLR 36; 80 ATC 4238; (1980) 10 ATR 869 - refer comments of Bowen CJ (at FLR 40; ATC 4241; ATR 872); *Smith v. FC of T* (1987) 164 CLR 513; 87 ATC 4883.

occur where a sportsperson receives an 'occasional' payment in respect of a service provided as part of a pastime or hobby (**Example 5**).

63. An 'occasional' voluntary payment received 'solely' because a sportsperson pursues sport in a systematic, regular and organised manner will not be assessable income. By 'solely' we mean the sportsperson is not an employee, engaged in the provision of services or carrying on a business in respect of his or her sporting activity. In this paragraph it is assumed that the sportsperson is not utilising their skills for the purpose of commercial exploitation thereof. Accordingly, the 'occasional' voluntary payment cannot be related to any income-producing activity (**Examples 3 and 8**).

64. An 'occasional' voluntary payment given and received on purely personal grounds is not assessable income. For example, an 'occasional' voluntary payment given on a specific personal event or because of some particular need is not assessable income (**Example 9)**.

Medals and trophies

65. A medal, trophy or other award will not be assessable income as they are given and received on personal grounds. For example, where an athlete, who otherwise exploits his or her skills for the purposes of commercial gain, is awarded a medal to recognise a personal achievement at an international competition.

66. An award on the other hand will be assessable income where it has intrinsic value, or represents an intrinsic form of remuneration to the person, rather than merely recognising a particular achievement of that person. [38] An example of this would be an award of cash or a car to an athlete who exploits his or her skills for the purposes of commercial gain.

Alternative views

67. It has been put to us that voluntary payments cannot be assessable income for the following reasons:

- to be assessable income, receiving voluntary payments would have to be an income-producing activity, or the voluntary payments would have to be received in relation to employment, services or a business. Receiving voluntary payments is not an income-producing activity, nor are they received in

[38] refer paragraph 13 of Miscellaneous Taxation Ruling MT2032 and paragraph 5 of Income Taxation Ruling IT2474

relation to employment, services or a business. As a sportsperson does not undertake his or her activity to produce voluntary payments, they are not a product of his or her activity. Receiving voluntary payments, even in conjunction with the sporting activity, is not, therefore, an income-producing activity:

- they are paid at the discretion of the payer and may be withdrawn, so they cannot be received in circumstances where the sportsperson has an expectation of receiving the payments as part of periodic, regular or recurrent payments. Accordingly, the sportsperson is not able to rely on the payment for his or her regular expenditure. It has been put to us that any of the following could result in a sportsperson's grant being withdrawn:

  i) a sportsperson breaches one of the rules of the governing body eg, is found taking a prohibited substance;

  ii) his or her performance falls below the required level; or

  iii) another sportsperson meets the qualifying criteria to a higher level: and/or

- the motive of the payer and the purpose of the sportsperson in pursuing his or her activity should determine whether voluntary payments are assessable income. It is argued that voluntary payments are not paid to provide for regular expenditures. Nor are they paid to reward a sportsperson for an activity. They are paid to provide incentive for talented sportspeople. The purpose of the sportsperson in undertaking his or her activity is solely to attain sporting excellence. As voluntary payments are not paid to provide for regular expenditures or as a reward they are not assessable income.

It is our opinion that the above views ignore or do not give due weight to the principle of determining the quality of a receipt according to its quality or character in the recipient's hands.

68. It is not necessary for voluntary payments to be in relation to employment, services or a business. While a sportsperson may not undertake sport to produce voluntary payments, they can be income according to ordinary concepts where they have that character and quality in the sportsperson's hands.

69. Also while a grant is capable of being withdrawn this does not mean that a sportsperson who continues to fulfil certain criteria cannot have an expectation of continuing to receive the grant.

70. For these reasons we consider that a voluntary payment that meets the criteria outlined in paragraph 48 would constitute assessable income.

71. It has also been put to us that because of the conditions/requirements of arrangements between a payer and a sportsperson the activities undertaken by the sportsperson are services to the payer. Accordingly, it is argued, that expenditures of sport are incurred in providing services and are deductible. Whether the payments are in respect of services or to enable the sportsperson to pursue their personal goal of achieving sporting excellence will depend upon the facts of each case. In many such cases it appears that while the payment is not a product of, or in respect of, services rendered, the sportsperson provides some services as well as undertaking activities for his or her own development. The fact that a sportsperson provides services to a payer will not make deductible either expenses that relate to: his or her personal pursuit of sporting excellence; or expenses outlayed for his or her own benefit. Conversely, where expenses are 'incurred' in providing bona-fide services (as described in paragraph 25), those expenses would be deductible.

Examples

Example 1: Proceeds of carrying on a business

72. Helen has a public profile as a result of considerable success in swimming at international level. Helen regularly receives and expects to receive substantial payments including money for swimming. Due to her success in swimming she has attracted numerous sponsorships, appearance fees and product endorsements.

73. Early in the year Helen entered into an endorsement contract with a national manufacturer of skin care products and agreed to a series of media advertisements and appearances at shopping centres. A condition of the contract is that she continue to participate in her chosen sport so as to maintain her level of recognition by the public. Helen engages a manager to solicit, negotiate and arrange her activities. It is considered that Helen carries on her swimming activities as a business.

74. Helen received a considerable sum of money as a result of the above endorsement. In addition, Helen was awarded a prize of a motor vehicle by the National Controlling Body (NCB) of her sport as the inaugural winner of the 'NCB and Car Manufacturer X's Performer of the Year Award'. The prize had been donated by the car manufacturer and the event was televised nationally.

75. The receipts from the endorsement contract are income according to ordinary concepts and form part of Helen's assessable income. The money value of the car is also assessable income to Helen because it is derived in connection with her business.

Example 2: Voluntary payments that are income: taxpayer also in receipt of non-cash benefits related to voluntary payments

76. Mary has participated in her chosen sport for some time and her successful performances have eventually included national and international events.

77. The NCB of her sport has recently obtained funding, and is now able to implement a scheme whereby it can pay Mary cash payments of a nominated amount for a set period. As part of the scheme the NCB also provides Mary with other non-monetary benefits (for example physiotherapy services, dietary supplements and counselling and advice in relation to possible future career paths). All payments and benefits are at the absolute discretion of the NCB, payments are allocated yearly and paid quarterly.

78. During the payment period Mary is required to train in preparation for a program of events determined by the NCB.

79. As the payments are income according to ordinary concepts they form part of Mary's assessable income. This would still be the case if the NCB varied the intervals over which the payments were made.

80. The non-monetary benefits provided to Mary in relation to her sport are not assessable, under paragraph 26(e), or sections 21 or 21A of the ITAA 1936. Also, they are not income according to ordinary concepts as Mary does not receive these in connection with employment, the provision of any services or a business.

Example 3: Non-assessable 'Occasional voluntary payment': taxpayer in receipt of assessable grant

81. Steve is a talented swimmer whose only income in relation to sport is a financial grant. The grant is paid regularly to provide financial support to Steve to meet ongoing living and sport related expenses. Accordingly, the grant is assessable income.

82. The meetings Steve competes in regularly offer prizes of value for participants. Steve does not have a history or realistic expectation of winning valuable prizes, nor does he decide which meetings to enter in an attempt to gain such prizes. Prizes are often awarded for: coming in the first three; breaking a personal best or record; or showing outstanding promise. These prizes are advertised so that

athletes competing at meetings know that valuable prizes will be awarded. For being voted 'most promising swimmer' of the meet Exploitation Co, sponsors of the competition, award Steve a prize valued at $5,000.

83. The fact that Steve receives the grant indicates he has attained a high standard of swimming and is competing to maintain and enhance those skills. He therefore needs to undertake his swimming activities in a systematic, regular and organised manner both to enhance his skills and to continue to receive the grant. While the prize was awarded to Steve because of his personal skills, he cannot be considered to be exploiting his skills in a commercial way, nor is winning valuable prizes an expected outcome of his activities. As the facts surrounding his winning the prize show that the winning of prizes is not in respect of commercial exploitation of his skills, nor related to any activity of an income-producing nature, the prizes are not assessable income.

Example 4: 'Occasional' voluntary payment: Testimonial related to services

84. Peter is contracted to provide coaching services for the Winners basketball club. He has provided his services for reward to the Winners for the last 10 years. He is a colourful personality and his presence at a sporting event is guaranteed to generate a high level of excitement and interest.

85. A group of his supporters lobbied the management of the club to promote an event to recognise the contribution made and services rendered by Peter to the club over the years. The main source of revenue for the event is gate takings which are donated to Peter.

86. As the testimonial receipts are in recognition of Peter's past services, they form part of his assessable income. This would still be the case if Peter had retired.

Example 5: 'Occasional' voluntary payment that is an incident of a hobby

87. Ron is a car enthusiast. As a hobby he races and demonstrates his car; the expenses of competing are far greater than any prize money or other payments he could receive. Ron has a full-time job as an accountant; it is the money he receives as an accountant that he uses to support himself and his hobby.

88. Some of the events Ron competes in offer prize money. Winning prizes is not the reason he competes; he competes to show off his car and for the enjoyment of racing. A local car detailing firm

offers to sponsor Ron's car, on a one off basis, for a particular high profile race.

89. As long as Ron's activities constitute a hobby, receipts in the form of prize money are not assessable income. The money received from the sponsor is not in relation to employment, services or a business: it is an incident of his hobby. Accordingly, it is also not assessable income in Ron's hands.

Example 6: Pastime income: non-related fee for service

90. As a social pastime or hobby Ian competes in triathlons. As a result of having won a recent event, he has a high public profile and a media network asks him to appear on TV and provide commentary at a series of Ironman events.

91. Ian receives $1,000 for each of his appearances on TV. Appearing in the media, as a commentator, is not a normal incident of Ian's hobby. The money is received in respect of him making himself available for TV and is not a result of his hobby. Accordingly, such receipts are assessable income in Ian's hands.

Example 7: Pastime receipts

92. Tony is an accountant by profession. Tony plays football on the weekends. The club he plays for gives him $100 for every game he plays. Tony does not play football to earn income for his regular expenditures. Nor are his receipts paid to provide financial support for Tony or relied on by Tony for that purpose. His motivation in playing football is personal; he does not do it as, nor does he intend it to become, an income producing activity. In a year Tony receives $3000 for playing football. Tony's total expenses exceed $3000.

93. Tony believes the money he receives is not assessable income.

94. Tony lodges an 'Application for a Private Ruling' at his local branch of the Australian Taxation Office (ATO) requesting a determination of whether his receipts from football are assessable income.

95. The ATO advises Tony that based on the facts supplied by him, his receipts are not assessable income. Tony keeps details of his receipts, expenditures and other relevant information to, if necessary, prove the facts he has set out in his Private Ruling request.

Example 8: 'Occasional' voluntary payment in the nature of a windfall gain

96. Karen is a nurse. She is also a very talented lawn bowler. It is the money she earns from nursing that she uses to pay her living expenses. Karen participates in lawn bowls as a hobby or social

pastime; she does not exploit her bowling skills in a commercial way for the purpose of gaining reward.

97. Each time Karen competes for the local club the secretary manager, on behalf of the club, gives her $10. It is never stated what the $10 is for; nor does Karen solicit or expect the $10. The $10 received by Karen cannot be viewed separately from her social pastime; accordingly it is not considered that the $10 is assessable income.

98. Karen is systematic, regular and organised about her bowling - she practices diligently and often. She is not, however, an employee, engaged in the provision of services (she bowls for her own benefit and not for the benefit of the club) or carrying on a business of bowling (because she is not utilising her talents for the purpose of commercial exploitation). Accordingly, her receipts cannot be related to any activity of an income-producing character.

99. Some of the competitions Karen competes in offer prize money. Prize money is not the reason Karen enters competition, nor does she have a history of winning or a reasonable expectation of winning prize money.

100. Karen comes first in one of the competitions she enters. First prize is $10,000. As the winnings cannot be related to any employment, services, a business or activity of an income-producing nature, it is in the nature of a 'windfall gain'.

Example 9: 'Occasional' voluntary payment given and received on purely personal grounds

101. Paula is a talented runner whose only income in relation to sport is a financial grant. The grant is paid regularly to provide financial support to Paula to meet ongoing living and sport related expenses. Accordingly, the grant is assessable income.

102. The meetings Paula competes in regularly offer prizes of value for participants. Prizes are often awarded for: coming in the first three; breaking a personal best or record; or showing outstanding promise. These prizes are advertised so that athletes competing at meetings know that valuable prizes will be awarded.

103. Although she performed exceptionally well at a recent meet, Paula was beaten in every category for which valuable prizes were awarded. A spectator at the meet, Mr Rich, was very impressed by Paula's efforts and the manner in which she conducted herself. On hearing of Paula's disappointment and in recognition of her personal qualities, Mr Rich presents Paula with $2000.

104. It is considered that the $2000 given by Mr Rich to Paula is not related to her sporting activities, but referable to the attitude of Mr

Rich personally to Paula personally. Accordingly, it is given and received on purely personal grounds and is not assessable income to Paula.

Example 10: Non-assessable 'Occasional voluntary payment': taxpayer in receipt of grant

105. Fred has a full-time job as a salesman with a sporting goods distributor. He is also a talented archer whose only income in relation to sport is a financial grant. The grant is assessable income.

106. The fact that Fred receives the grant indicates he has attained a high standard of archery and is required to maintain and enhance those skills.

107. As archery does not enjoy a high public profile, Fred does not have the opportunity to receive any other income from his archery pursuits. Although Fred competes regularly, the competitions are invariably not sponsored and do not offer valuable prizes. Recently, Fred was voted by the local TV network as the region's most promising athlete; as part of this award he was also given $2000.

108. While he needs to undertake his archery activities in a systematic, regular and organised manner, he has a full-time job and is not utilising his skills for the purpose of commercial exploitation; accordingly, he is not engaged in the carrying on of a business in respect of his archery. As he is also not employed or engaged in the provision of services in relation to his archery, the award cannot be related to an income-producing activity. Also, the receipt of award money is not an expected outcome from, nor can it be considered a common incident of, his archery activities. As the $2000 cannot be related to any income-producing activity, it is not assessable income.

Example 11: Sportsperson in business: receipt of non-convertible benefit not related to business

109. Todd carries on the business of participating in cricket. Cricket was recently added as a official sport of the National Games. Todd was selected to participate as an Australian athlete in the next National Games which is to be held overseas. He will not participate for reward and participation does not form part of his business.

110. To enable him to participate, the Games Organising Committee gives him an airline ticket to the overseas location at which the games are to be held. This ticket is not convertible, nor can it be transferred to anyone else.

111. As the ticket is not convertible or transferable, it is not considered income according to ordinary concepts in Todd's hands.

Also, as it is not related to employment, services or a business it is not assessable income under paragraph 26(e), section 21 or section 21A of the ITAA 1936.

Detailed contents list

112. Below is a detailed contents list for this Ruling:

	Paragraph
What this Ruling is about	**1**
Class of person/arrangement	3
Date of effect	**6**
Ruling	**8**
Explanations	**15**
Ordinary income	15
Provisions relating to statutory income	18
Income and benefits received by an employee	20
Income from services provided outside of employment	25
Income from business activities	29
Receipts incidental to a pastime	32
Voluntary payments	35
FC of T v. Dixon	*35*
Subsequent court decisions	*44*
Voluntary payments: Financial grants	*45*
Voluntary payments that are considered to be income	*48*
Sporting expenditure where a sportsperson is in receipt of 'voluntary payments'	*51*
Non monetary benefits received in relation to 'voluntary payments'	*54*
'Occasional' voluntary payments	55
'Occasional' voluntary payments that are considered income	*60*
'Occasional' voluntary payments that are not considered income	*61*
Medals and trophies	*65*
Alternative views	67
Examples	**72**

Example 1: Proceeds of carrying on a business 72

Example 2: Voluntary payments that are income; taxpayer also in receipt of non cash benefits related to voluntary payments 76

Example 3: Non assessable 'Occasional voluntary payment': taxpayer in receipt of assessable grant 81

Example 4: 'Occasional' voluntary payment: Testimonial related to services 84

Example 5: 'Occasional' voluntary payment that is an incident of a hobby 87

Example 6: Pastime income: non related fee for service 90

Example 7: Pastime receipts 92

Example 8: 'Occasional' voluntary payment in the nature of a windfall gain 96

Example 9: 'Occasional' voluntary payment given and received on purely personal grounds 101

Example 10: Non assessable 'Occasional voluntary payment: taxpayer in receipt of grant 105

Example 11: Sportsperson in business; receipt of non convertible benefit not related to business 109

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Previous draft:
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Related Rulings/Determinations:
IT 2262; IT 2474; MT 2032;
TR 97/11

Subject references:
- age pensions
- business income
- capital receipts
- carrying on a business
- gifts and donations
- government grants income
- gratuity income
- hobby vs business
- income support payments
- Olympic games
- personal exertion income
- personal services income
- prizes and awards
- reimbursed expenses
- sport
- sporting organisations
- sports clubs
- sports coaches
- sports facilities
- sports officials
- sportspeople

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- ITAA36 21
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- ITAA97 6-5(1)
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