

CR 2015/68 - Income tax: Medal Incentive Funding payments provided by the Australian Olympic Committee

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Class Ruling

Income tax: Medal Incentive Funding payments provided by the Australian Olympic Committee

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① This publication provides you with the following level of protection:

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

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this ruling are:

- Section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- Section 6-10 of the ITAA 1997
- Section 8-1 of the ITAA 1997, and
- Division 12 of Schedule 1 to the *Taxation Administration Act 1953* (TAA).

Class of entities

3. The class of entities to which this Ruling comprises athletes who are not carrying on a business as a sportsperson and are in receipt of payments provided by the Australian Olympic Committee (AOC) under the Medal Incentive Funding (MIF) program.

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme is actually carried out in accordance with the scheme described in paragraphs 9 to 30 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- this Ruling may be withdrawn or modified.

Date of effect

7. This Ruling applies from 1 July 2014 to 30 June 2019. However, the Class Ruling continues to apply after this date to athletes receiving MIF payments, subject to there being no change to the scheme described in paragraphs 9 to 30 of this ruling.

8. The Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant.

10. The AOC has exclusive responsibility for the representation of Australia at the Olympic Games, Youth Olympic Games and at the regional, continental or world multi-sports competitions recognised by the International Olympic Committee (IOC).

11. The Olympic Games includes the Summer Olympic Games (summer sports) and Winter Olympic Games (winter sports). The AOC has a number of objectives for these games.

12. To help achieve these objectives the AOC will provide funding known as 'AOC Funding' or, in the case of direct funding to medallists, the 'Medal Incentive Funding' (MIF).

13. AOC Funding (including MIF) is derived from distributions from the Australian Olympic Foundation (AOF), grants from the IOC, known as Olympic Solidarity, grants from the Organising Committees for the Olympic Games (OCOGs), sponsorship and licensing and fundraising for Olympic Teams by the AOC, State/Territory Olympic Councils and the Olympic Team Appeal Committees.

MIF Payments

14. MIF is an ongoing funding program. The purpose of the MIF is to help recipients gain selection to represent Australia at the Summer Olympic Games or Winter Olympic Games and win medals.

15. The terms of the MIF are generally set for a 4 year period. Changes may be made within that 4 year period, however this is rare.

16. Separate Program and Funding Guidelines are issued for summer and winter sports, but are based on essentially the same principles and are for 4 year periods.

17. Under the 2013-16 Program and Funding Guidelines for summer sports, the following athletes are considered for MIF:

- athletes who won medals at the 2012 Olympic Games, and
- athletes who win medals in the 2013, 2014 and 2015 at World Championships or other major international competitions of a comparable standard in events on the 2016 Olympic Games programs (agreed in advance by the AOC as appropriate 'benchmark competitions').

18. The MIF payment is made in the year immediately following the year in which the medal is won. The payments are made in the following amounts:

Summer Athletes			
<i>Year in which MIF paid or will be paid</i>	<i>Gold</i>	<i>Silver</i>	<i>Bronze</i>
2013	\$15,000	\$10,000	\$7,500
2014	\$15,000	\$10,000	\$7,500
2015	\$20,000	\$13,400	\$10,000
2016	\$20,000	\$13,400	\$10,000

19. Under the 2014-2018 Programs and Funding Guidelines for winter sports, the following athletes are considered for MIF:

- athletes who won medals at the 2014 Olympic Winter Games, and
- athletes who win medals in the 2014/15 or 2015/16 at World Championships or other major international competitions of a comparable standard in events on the 2018 Olympic Winter Games programs (agreed in advance by the AOC as appropriate 'benchmark competitions').

20. The payments are made in the following amounts:

Winter Athletes			
<i>Year in which MIF paid or will be paid</i>	<i>Gold</i>	<i>Silver</i>	<i>Bronze</i>
2014	\$15,000	\$10,000	\$7,500
2015	\$15,000	\$10,000	\$7,500
2016	\$20,000	\$13,400	\$10,000

21. In order for the athletes to be considered for MIF payments, they must maintain appropriate training regimes with the intention of gaining national (or 2016 Olympic or 2018 Winter Olympic) selection in the year subsequent to them winning a medal. It is not necessary that the event for which they are training be the same as that in which the medal was won, provided it is in the same sport and on the program for the 2016 Olympic Games or the 2018 Winter Olympic Games.

22. Athletes who won medals at the 2012 Olympic Games or the 2014 Winter Olympic Games may be excused from maintaining an appropriate training regime and will carry forward their eligibility to be considered for MIF to 2014, 2015 or 2016 (2015/16 or 2016/17 for winter sports). Athletes who carry forward their eligibility for consideration for MIF will only be eligible for funding in the amount payable in 2013 or 2014.

23. The AOC will determine the amount of any funding to be provided for the following years, in the context of its financial forecasts and other priorities.

24. Athletes who win more than one medal in any year are considered for MIF in respect of their best result only.

25. Members of medallist teams and other combinations are considered for the same MIF as individual medallists.

26. MIF for medallists is determined by the AOC in its sole and absolute discretion.

27. Any MIF is paid as one payment made as soon as practicable at the commencement of the calendar year (or after 1 July for winter sports) following the medal winning performance. In the case of athletes who carry forward their eligibility for consideration for MIF the funding will be paid as one payment upon them actually gaining and accepting national selection.

28. Recipients do not generally receive more than one MIF payment in any year. The only circumstance in which a recipient may receive more than one payment in a year is if they are an Olympic medallist and have deferred payment in respect of that medal and subsequently win another medal, in which case they may also receive payment in respect of the subsequent medal.

29. Athletes who receive MIF have no duty or obligation to provide any services to the AOC or sponsor partner and nor does the AOC or sponsor partner regard this funding as a reward for services. It is a matter for the athlete as to whether they acknowledge or publicise their MIF payment or the Scheme.

30. Recipients are not required to enter into any agreement with the AOC. The Guidelines define the terms under which the AOC will consider the athletes eligibility for funding. However, athletes are bound by the AOC Anti-Doping By-Law, whereby if an athlete commits any anti-doping rule violation, doping offences or breach of the By-Law, the athlete must repay any monies paid to them under the AOC Funding Programs.

Ruling

31. MIF payments provided by the AOC are not assessable income for the purposes of sections 6-5 or 6-10.

32. MIF payments provided by the AOC are not regarded as withholding payments under Division 12 of Schedule 1 to the TAA.

33. No deduction is allowed under section 8-1 for expenses incurred to the extent to which they relate to the receipt of an MIF payment.

Commissioner of Taxation

26 August 2015

Appendix 1 – Explanation

① *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

34. 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

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

36. The courts have identified a number of factors in determining whether an amount is ordinary income, these include:

- whether the payment is the product of any employment, services rendered or any business¹
- the quality or character of the payment in the hands of the recipient²
- the form of the receipt, whether it is received periodically or as a lump sum,³ and
- the motive of the person making the payment. Motive however, is rarely decisive a mixture of motives may exist.⁴

37. When considering the first and last factors in paragraph 36 of this Ruling it is appropriate to look at the nature of the relationship between the athletes in receipt of the MIF payments and the AOC which makes the payments.

38. The AOC is responsible for the representation of Australia at the Olympic Games, including the Winter Olympic Games, and has certain objectives in relation to the 2016 Olympic Games and 2018 Winter Olympic Games. To this end, the AOC provides, amongst other things, direct funding to athletes under the MIF program.

¹ *FC of T v. Harris* (1980) 42 FLR 36; 80 ATC 4238; (1980) 10 ATR 869 at FLR 40; ATC 4241; ATR 872 and *Hayes v. FC of T* (1956) 96 CLR 47; (1956) 11 ATD 68 at CLR 54; ATD 72.

² *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 and *GP International Pipecoaters Pty Ltd v. FC of T* (1990) 170 CLR 124; [1990] HCA 25; 90 ATC 4413; (1990) 21 ATR 1 at CLR 136; ATC 4419; ATR 6.

³ *FC of T v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82 at CLR 557; ATD 86.

⁴ *Hayes v. FC of T* (1956) 96 CLR 47; (1956) 11 ATD 68 at CLR 55; ATD 72-73.

39. Athletes in receipt of the MIF payments are required to maintain appropriate training regimes with the intention of gaining national or Olympic selection in the year subsequent to winning a medal. They are not required to enter into any agreement, however are bound by the AOC Anti-Doping By-Law. The Commissioner does not consider that these factors are sufficient to amount to an employer/employee relationship between the AOC and the athlete.

Voluntary payments that are considered to be income

40. As the relationship is not one of employer/employee and there is no legal obligation on the part of the AOC to make MIF payments to specific athletes the nature of the voluntary payments needs to be considered. Paragraph 48 of Taxation Ruling TR 1999/17 states:

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 periodical, regular or recurrent payments;
- (ii) 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) 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.

41. Although athletes in receipt of MIF payments must meet some criteria (such as appropriate training regimes), there is no agreement of any type between the AOC and athletes.

42. MIF payments are normally a one-off payment based on an athlete's best result for the year. Athletes who win more than one medal in the same year do not receive additional or recurrent payments.

43. The standard letter issued by the AOC to athletes advising they are eligible to receive an MIF payment states that the purpose of the payment is to assist in their preparation for the Olympic Games. The amount of a one-off payment is set in the AOC's guidelines. MIF payments are not regular, periodic or expected. An athlete cannot rely on the receipt of an MIF payment. These factors lead to the conclusion that the MIF payments are not income according to ordinary concepts.

Statutory income

44. As the MIF payments are not considered to be ordinary income, it is necessary to consider whether the payments could also be statutory income under section 6-10.

45. 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.

46. 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 ...

47. The main issue to consider with respect to subsection 15-2(1) is whether the MIF payment is '... provided to you in respect of ... any employment of or services rendered ...'. Whilst the athletes are not considered 'employees', subsection 15-2(1) also includes in assessable income those allowances etc. which are paid in respect of 'services rendered'.

48. There is no agreement between any parties that requires athletes to provide or supply services to the AOC. Athletes are required to meet certain criteria in order to qualify for the payments however; these conditions do not amount to the rendering of services to the AOC. As such, the MIF payments are not assessable under section 15-2 because the athletes are not considered to be employees, nor are they 'rendering services'.

General deductions

49. Taxpayers are entitled to deduct from their assessable income any loss or outgoing to the extent it was incurred in gaining or producing their assessable income under section 8-1.

50. Expenses incurred by athletes are not allowable as a deduction against the MIF payments as these payments are not assessable income.

Pay as You Go Withholding

51. The relationship between the AOC and the athletes in receipt of the MIF payments is not one of employer and employee. Furthermore, the relationship between the athletes and the AOC is not one of the provision of services. Accordingly the payments are not regarded as withholding payments under Division 12 of Schedule 1 to the TAA. The AOC will not be required to withhold amounts from these payments nor will they have any other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, payment summaries and annual reporting.

Appendix 2 – Detailed contents list

52. The following is a detailed contents list for this Ruling:

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References

Previous draft:

Not previously issued as a draft

- ITAA 1997 15-2(1)
- TAA 1953
- TAA 1953 Sch 1 Div 12

Related Rulings/Determinations:

TR 1999/17; TR 2006/10;
CR 2007/36

Case references:

Subject references:

- PAYG withholding
- voluntary payments to sportspersons

- GP International Pipecoaters Pty Ltd v. FC of T (1990) 170 CLR 124; [1990] HCA 25; 90 ATC 4413; (1990) 21 ATR 1
- FC of T v. Blake 84 ATC 4661; (1984) 15 ATR 1006
- FC of T v. Dixon (1952) 86 CLR 540; (1952) 10 ATD 82
- FC of T v. Harris (1980) 42 FLR 36; 80 ATC 4238; (1980) 10 ATR 869
- Scott v. FC of T (1966) 117 CLR 514; (1966) 14 ATD 286
- Hayes v. FC of T (1956) 96 CLR 47; (1956) 11 ATD 68

Legislative references:

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
- ITAA 1997 15-2

ATO references

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