


***CR 2005/44 - Income tax: assessable income:
sporting officials: Howzat Newcastle Indoor Sporting
Centre receipts***

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Class Ruling

Income tax: assessable income: sporting officials: Howzat Newcastle Indoor Sporting Centre receipts

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Arrangement** and **Ruling** parts of this document are a 'public ruling' in terms of Part IVA of the **Taxation Administration Act 1953**. CR 2001/1 explains Class Rulings and 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 Class Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax law(s)' identified below apply to the defined class of persons, who take part in the arrangement to which this Ruling relates.

Tax law(s)

2. The tax laws dealt with in this Ruling are sections 6-5, 6-10 and 8-1 of the *Income Tax Assessment Act 1997* (ITAA 1997).

Class of persons

3. The class of persons to which this Ruling applies is sporting officials who receive payments for officiating in indoor sporting matches conducted at the Howzat Newcastle Indoor Sporting Centre (Howzat).

Qualifications

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

5. The class of persons defined in this Ruling may rely on its contents provided the arrangement actually carried out is carried out in accordance with the arrangement described in paragraphs 9 to 22.

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

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- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 July 2004. However, this Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 to 22 of Taxation Ruling TR 92/20). Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*;
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents and telephone records which are attached to the file record maintained by the Tax Office for this ruling. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or part of documents incorporated into this description of the arrangement are:

- Letter from Tax Agent (dated 16 November 2004) received by facsimile on 25 November 2004;
- Application for Private Ruling (dated 25 November 2004) received by facsimile on 25 November 2004;

- Additional information from Tax Agent (dated 15 March 2005) received by facsimile on 15 March 2005; and
- Additional information from Tax Agent provided by way of telephone conversation on 18 April 2005.

10. Howzat is an indoor sporting centre providing for sports such as cricket, netball, volleyball and soccer. Additionally there is a gymnasium and a childcare facility. Howzat is a commercial business that charges the general public fees for use of the facilities and the services of its staff.

11. A number of individuals are recruited to officiate at the various sports offered. These individuals are tested to ensure that they have the required knowledge and ability. They are continually monitored to ensure that they perform to the required standard.

12. The officials are placed on a weekly roster stating when and how many matches they will officiate per week. The number of matches that an official will be required for is governed by a minimum and maximum policy at Howzat. On average each official would officiate in 6 matches per week.

13. Howzat determines when the official is to start and finish and when the games will be scheduled.

14. The officials receive an amount per match at a rate determined by Howzat. The officials are paid for the actual number of matches officiated and not for the amount of time that they are there. The earnings achievable by the officials are limited due to Howzat's policy of minimum and maximum matches per week that an official can participate in.

15. At the end of each shift the officials are required to submit a time sheet indicating number of matches officiated, the rate per match and the total owed to them. This sheet is co-signed by a manager.

16. The officials pay for their own uniforms, obtained from Howzat, via a set amount withheld from their match payments. The official provides no other assets or materials.

17. Officials are unable to delegate their duties to third parties. If the official is unable to perform the service, then it is Howzat who determines the replacement.

18. Howzat carries insurance with regard to any risk associated with the matches at which the official officiates.

19. Where there is any dispute as to how a rule of a sporting competition is to be interpreted, Howzat through its managers and senior officers will decide how that rule is to be interpreted and applied. All sporting officials are required to follow the decision that Howzat has made.

20. To ensure the safety of the competitors in a sport, Howzat may direct that the competitors have and use mouthguards, helmets, pads or other safety equipment. Howzat may direct that competitors do not take onto the court jewellery or other items that may be hazardous to their team mates and opponents. Sporting officials are required to enforce all safety requirements as directed by Howzat.

21. Howzat has processes in place where it can investigate complaints about the performance and behaviour of the sporting officials and if necessary take appropriate action.

22. Sporting officials may report inappropriate behaviour by the players, coaches and team managers of the competing teams. Any decision to fine, suspend or ban a player, coach or team manager will be made by Howzat.

Ruling

23. The match fees paid to officials who officiate at matches for Howzat are assessable income under section 6-5 of the ITAA 1997.

Explanation

24. A payment or other benefit received by a taxpayer 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*).

Ordinary income

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

26. 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;
- whether the payment received is income depends upon a close examination of all relevant circumstances; and

- whether the payment received is income is an objective test.

27. 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;
- the quality or character of the payment in the hands of the recipient;
- the form of the receipt, that is, whether it is received as a lump sum or periodically; and
- the motive of the person making the payment. Motive, however is rarely decisive as in many cases a mixture of motives may exist.

28. It is appropriate to look at the nature of the relationship between the officials and Howzat when considering the first and last of the factors listed in paragraph 27.

29. It is part of the business of Howzat to run sporting competitions for a fee. To effectively operate a sporting competition, Howzat provides its clients with access to a court suitable for the sport and balls, nets, goals and officials as required. The services of the sporting official are an integral part of the sporting competition that clients of Howzat are purchasing.

30. The relationship between an employer and an employee is a contractual one. It is often referred to as a contract of service. An employee contracts to provide their labour, typically to enable the employer to achieve a result.

31. The officials provide their service of the labour by officiating in matches conducted at Howzat's premises and for the purpose of Howzat's business activities.

32. The classic 'test' for determining the nature of the relationship between a person who engages another to perform work and the person so engaged is the degree of control which the former can exercise over the latter. A common law employee is told not only what work is to be done, but how and where it is to be done. With the increasing usage of skilled labour and consequential reduction in supervisory functions, the importance of control lies not so much in its actual exercise, although clearly that is relevant, as in the right of the employer to exercise it.

33. There are a number of indicators present in the circumstances here that lead to the conclusion that Howzat is exercising a significant degree of control over the services provided by the officials. Those indicators are:

- the time and number of matches officiated are determined solely by Howzat;

- the officials carry none of the risk associated with the matches at which they officiate;
- the officials are not able to delegate responsibility for the provision of their services;
- the officials provide no assets, other than their uniform, in the completion of their services;
- the officials are required to implement the safety procedures of Howzat;
- the level of expertise required to provide the services is determined by Howzat through their selection and ongoing monitoring of the officials proficiency;
- the outcome of any complaints about the performance and behaviour of the sporting officials are determined by Howzat; and
- Howzat adjudicates how rules of the sporting competitions should be interpreted when required.

34. The presence of these indicators leads us to conclude that the nature of the relationship between Howzat and the officials is one of employer and employee. The payments being made to the officials by Howzat are a product of that employment relationship and are specifically for the services rendered by the officials under that relationship.

35. In looking at the remaining factors listed in paragraph 27 we can take some guidance from case law. The characteristics of ordinary income that have evolved from case law can be summarised to include receipts that;

- are earned;
- are expected;
- are relied upon; and
- have an element of periodicity, recurrence or regularity.

36. As discussed in paragraphs 30 to 34 the officials are providing services under an employment relationship and for which they are receiving the match payments. Those payments are earned by the officials. Although the employment may be of a part time or casual nature the payments are expected by the official and have an element of periodicity, recurrence and regularity.

37. As a result of looking at these factors it is concluded that the payments received by the officials are income according to ordinary concepts. They are therefore ordinary income in the hands of the officials and will form part of their assessable income under section 6-5 of the ITAA 1997.

Statutory income

38. As the payments are considered to be ordinary income, it is not necessary to consider whether the payments could also be statutory income under section 6-10 of the ITAA 1997.

General deductions

39. Taxpayers are entitled to deduct from their assessable income any loss or outgoing to the extent that it was incurred gaining or producing their assessable income under section 8-1 of the ITAA 1997.

Pay As You Go (PAYG) withholding

40. As explained above, match payments paid to an official who is employed at Howzat are assessable income and in particular salary or wages. The payments are regarded as withholding payments for the purposes of Division 12 of Schedule 1 to the *Taxation Administration Act 1953*. An entity making match payments to officials who are in the class of persons to which this Ruling applies will be required to withhold amounts from these payments and will have other associated PAYG withholding obligations – for example, obtaining Tax File Number declarations, payment summaries, annual reporting.

Detailed contents list

41. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

8 June 2005

Previous draft:

Not previously issued as a draft

- sporting organisations

- sports people

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 92/20;
TR 97/16; TR1999/17

Legislative references:

- ITAA 1997 6-5

- ITAA 1997 6-5(1)

- ITAA 1997 6-10

- ITAA 1997 8-1

- TAA 1953 Pt IVAAA

- TAA 1953 Sch 1 Div 12

- Copyright Act 1968

Subject references:

- allowances

- assessable income

- hobby v. business

- sport

ATO references

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