

CR 2007/57 - Income tax: Education and Training Grant payments provided by the Australian Cricketers Association

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Class Ruling

Income tax: Education and Training Grant payments provided by the Australian Cricketers Association

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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, we must apply the law to you in the way set out in the ruling (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided we are 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 provision(s) 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;
- section 15-2 of the ITAA 1997;
- section 51-10 of the ITAA 1997;
- section 51-35 of the ITAA 1997;
- section 21 of the *Income Tax Assessment Act 1936* (ITAA 1936); and
- section 21A of the ITAA 1936.

Class of entities

3. The class of entities to which this Ruling applies are Australian first class cricketers, past and present, at the national, state or rookie level who are in receipt of Education and Training Grant payments (Grant) provided by the Australian Cricketers Association (ACA) for preparation for life after cricket.

Qualifications

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

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 13 to 26 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.

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Date of effect

8. This Ruling will apply from 1 July 2006 to 30 June 2013. However, the Ruling continues to apply after this date to all entities within the specified class who entered into the specified scheme during the term of the Ruling, subject to there being no change in the scheme or in the entities involved in the scheme.

9. The 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. Furthermore, the Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*; or
- the relevant provisions are not amended.

10. If this Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

11. If this Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Ruling is made, the following two conditions are met:

- the income year or other period to which the rulings relate has not begun; and
- the scheme to which the rulings relate has not begun to be carried out.

12. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

Scheme

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

14. The ACA is an independent body established to represent the interests of Australian first class cricketers, past and present, at the national, state or rookie level.

15. The ACA performs the following functions:

- acts as the collective and representative voice of first class cricketers in Australia;
- safeguards the rights of both present and past first class cricketers;
- provides and improves the welfare of its members;
- provides advice, services or assistance where deemed appropriate;
- pursues initiatives that will ultimately benefit the membership; and
- promotes the sport of cricket.

16. The ACA has established and funded the Education and Training Grant Program to encourage its members to plan and prepare for life after cricket. An amount of \$150,000 is allocated each year for the program. The maximum individual grant is \$4,000. The ACA anticipates that between 40 and 60 players will receive the Grant each year.

17. To be eligible for the Grant the player must be a member of the ACA. A player who has retired or been delisted from national, state or rookie level within the previous year is eligible to join the ACA and to apply for the grant. The ACA assists a player in identifying suitable educational and training courses which link with their proposed career path after cricket. No distinction is made between the level of cricketer.

18. The course must be accredited with a registered training or educational institution. It must relate to the player's life after cricket and the player must be currently enrolled in the course. Study will be undertaken on a part-time basis.

19. There are two rounds for applications each year, Round One closes on 29 January and Round Two closes on 20 July. Applications, irrespective of the period of the course, must be made each year the player wishes to receive the Grant. Players who are given the Grant for Semester 1 will receive the Grant monies in March, and Semester 2 will receive the Grant monies in August.

20. The Grant is available for course fees, student fees, tuition and essential course material. It can be used to pay Commonwealth Supported Place invoices (previously known as HECS). The grant does not cover items such as stationery, text books, calculators or general equipment nor does it cover living expenses.

21. There is no obligation on players who receive the grant to perform or provide any service, including appearances for the ACA or any other party. Funding for the grant is not directly or indirectly provided by a sponsor.

22. The following figures indicate the maximum amount of funding available for courses undertaken per calendar year. The funding may be increased at the absolute discretion of the Education and Training Sub-Committee.

Course Type	Maximum
Short Courses/Professional Development (Maximum 2 courses per year)	\$500 per course
Year 12 (Tutorial assistance)	\$2,000
TAFE and Private –Short Course (Cert 1, II or III)	\$1,000
TAFE & Private Providers – Long Course (Cert IV, Diploma, Advanced Diploma)	\$2,500
University (BA, Honours, Grad Certificate, Grad Diploma)	\$4,000
Professional Qualifications	\$1,000

23. If the full \$150,000 is not distributed for Semesters 1 and 2 the Education and Training Sub-committee may review the grants made to players and provide extra funding to players where the original grant received did not fully cover their educational needs.

24. The Grant may be paid by the ACA as a direct payment to the educational institution or as a reimbursement to the member upon receipt of a dated invoice or receipt for the educational expenses from an accredited educational institution. It can also be paid by the ACA as a reimbursement to a third party on written direction of the player.

25. Any player withdrawing from a course for which they have received a grant is required to repay the grant monies within two months of withdrawing from the course. Failing to repay the money will result in the player being ineligible for future grants of any type from the ACA's Career and Welfare program.

26. Any player who fails will be required to repay the grant unless they can demonstrate that the failure was not due to withdrawal or non attendance. Grants will not be available for courses or units previously failed by a player. It will be the responsibility of the Education and Training Sub-Committee in consultation with State Career and Welfare Managers to determine the circumstances surrounding a player's failure of a course or unit and the possible requirement to repay grant monies.

Ruling

27. Amounts received under the ACA's Education and Training Grant Program are not assessable income for the purposes of section 6-5 or section 6-10 of the ITAA 1997.

Commissioner of Taxation

20 June 2007

Appendix 1 – Explanation

❶ *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.*

28. The members of the ACA are or were first class cricketers and are sportspeople to whom Taxation Ruling TR 1999/17 Income tax: sportspeople – receipts and other benefits obtained from involvement in sport will be relevant.

29. 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*).

30. Paragraph 9 of Taxation Ruling TR 1999/17 states that for a sportsperson 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.

Ordinary income

31. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included in a taxpayer's assessable income if it is income according to ordinary concepts.

32. 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 by the ordinary concepts and usages of mankind except in so far as statute dictates otherwise;¹

¹ *Scott v. FC of T* (1935) 35 SR (NSW) 215; (1935) 3 ATD 142 per Jordan CJ at SR 219; ATD 144.

- whether the payment received is income depends upon a close examination of all relevant circumstances;² and
- whether the payment received is income is an objective test.³

33. 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;⁴
- the quality or character of the payment in the hands of the recipient;⁵
- the form of the receipt, whether it is received periodically or as a lump sum;⁶ and
- the motive of the person making the payment. Motive however, is rarely decisive as a mixture of motives may exist.⁷

34. Given the functions of the ACA, as set out in paragraph 15 of this Ruling, an employer/employee relationship does not exist between the players in receipt of the Education and Training Grant and the ACA, for the purposes of the first and last factors in paragraph 33 of this Ruling.

35. As the decision to award a grant to a player applicant is at the discretion of the Education and Training Sub-Committee of the ACA and the ACA is under no legal obligation to make a payment they are voluntary payments.

36. Paragraph 12 of TR 1999/17 states:

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;

² *The Squatting Investment Co Ltd v. FC of T* (1953) 86 CLR 570 at 627; (1953) 10 ATD 126 at 146.

³ *Hayes v. FC of T* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73.

⁴ *FC of T v. Harris* (1980) 42 FLR 36 at 40; 80 ATC 4238 at 4241; (1980) 10 ATR 869 at 872 and *Hayes v. FC of T* (1956) 96 CLR 47 at 54; (1956) 11 ATD 68 at 72.

⁵ *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) 4 ATD 286 (at CLR 526; ATD 293) and *GP International Pipe Coaters Pty Ltd v. FC of T* (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1 (at CLR 136; ATC 4419; ATR 6).

⁶ *FC of T v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82 (at CLR 557; ATD 86).

⁷ *Hayes v. FC of T* (1956) 96 CLR 47; (1956) 11 ATD 68 (at CLR 55; ATD 72-73).

- (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.

37. The ACA's Grant is limited to payments for course fees, student fees, tuition and essential course material for courses accredited with registered educational institutions. The Grant does not specifically contribute towards the player's living expenses. The Grants are either made by direct payment to the educational institution, reimbursement of the player or reimbursement to a third party.

38. Grants may be made twice yearly for Semesters 1 and 2 or in the case of a full year course in the first application period and do not extend beyond one year. The grant does not have the periodical, regular or recurrent payments in the sense intended in paragraph 12 of TR 1999/17.

39. Continued receipt of the Grant is conditional on successful completion of the player's studies. Any player who fails, unless they can show that the failure was not due to withdrawal or non attendance, or withdraws from a course must repay the Grant monies. Grants are given on a semester or yearly basis. In these circumstances a player would not have an expectation of receiving the Grant monies on a regular or recurrent basis.

40. There is no employment or business relationship between the player and the ACA. A successful applicant is not required to enter into any contractual relationship with either the ACA or a sponsor to perform services of any kind in return for the payment of the Grant monies.

41. These factors when considered together, lead to the conclusion that the Grants are not income according to ordinary concepts.

Statutory income

42. As the Grants are not considered to be ordinary income it is necessary to consider whether the payments could also be included in assessable income under section 6-10 of the ITAA 1997.

43. Section 6-10 of the ITAA 1997 includes in assessable income amounts that are not ordinary income; these amounts are statutory income. These statutory income provisions are listed in section 10-5 of the ITAA 1997. For sportspeople the most relevant list items are sections 21 and 21A of the ITAA 1936,⁸ and section 15-2 of the ITAA 1997:

- section 21 of the ITAA 1936 provides that 'where, upon any transaction, 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 of the ITAA 1936;
- section 21A of the ITAA 1936 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; and
- section 15-2 of the ITAA 1997 provides that the value of all allowances, gratuities, compensation, benefits, bonuses and premiums provided in respect of, or for or in relation directly or indirectly to, any employment of or services rendered is included in assessable income. This is so whether the things were provided in money or in any other form.

44. The documents explaining the scheme establish that the players are not providing services to the ACA. The players are required to meet certain conditions in order to qualify for payment of the Grant. These do not amount to the rendering of services to the ACA. As such the payments are not assessable under section 15-2 of the ITAA 1997 because the players are not considered to be employees, nor are they 'rendering services' to the ACA. Similarly, as there is no business relationship between the players and the ACA, the payments are not assessable under sections 21 or 21A of the ITAA 1936.

⁸ Paragraph 26(e) of the ITAA 1936 was formerly listed in section 10-5 of the ITAA 1997 but was archived following amendment of section 10-5 by *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*. Section 15-2 was inserted into the ITAA 1997 by the same Act taking the place of paragraph 26(e).

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 1999/17

Subject references:

- sporting organisations
- voluntary payments to sportspersons

Legislative references:

- ITAA 1936 21
- ITAA 1936 21A
- ITAA 1936 26(e)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 51-10
- ITAA 1997 51-35
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

- Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006

Case references:

- 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
- GP International Pipe Coaters Pty Ltd v. FC of T (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. FC of T (1956) 96 CLR 47; (1956) 11 ATD 68
- Scott v. FC of T (1935) 35 SR (NSW) 215; (1935) 3 ATD 142
- Scott v. FC of T (1966) 117 CLR 514; (1966) 4 ATD 286
- The Squatting Investment Co Ltd v. FC of T (1953) 86 CLR 570; (1953) 10 ATD 126

ATO references

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