

Via email: fameorimage@treasury.gov.au

31 January 2019

TAX INTEGRITY – TAXATION OF INCOME FOR AN INDIVIDUAL'S FAME OR IMAGE

SUBMISSION OF THE COALITION OF MAJOR PROFESSIONAL AND PARTICIPATION SPORTS INCORPORATED

The Coalition of Major Professional and Participation Sports (COMPPS) makes the following submission in response to the Government's request for comments on its proposed approach to implementing the 2018-19 Budget measure: *Tax Integrity — taxation of income for an individual's fame or image* to apply from 1 July 2019.

The Government's consultation paper advises that:

- the measure aims to ensure that all remuneration (including payments and non-cash benefits) provided for the commercial exploitation of a person's fame or image will be included in the assessable income of that individual; and
- the Government is committed to improving the integrity of the tax system by ensuring that high profile individuals are not able to take advantage of lower tax rates by licensing their fame or image to another entity.

COMPPS

COMPPS consists of the following organisations:

- Australian Football League (**AFL**);
- Cricket Australia (**CA**);
- Football Federation Australia (**FFA**);
- National Rugby League (**NRL**);
- Netball Australia (**NA**);
- Rugby Australia (**RA**) and
- Tennis Australia (**TA**).

These sports play a huge role in developing, promoting and presenting sport in Australia from the grass roots through to the international level. They are not-for-profit bodies and are responsible for the long-term development and sustainability of their sports.

Each of these organisations is the governing body and custodian of a major professional sport in Australia. They are mass participation sports - between them, they have over 9 million participants and 16,000 clubs.



COMPPS members provide a wide range of public benefits through a self-funding business model. A large portion of the revenue of COMPPS members is devoted to enhancing, promoting and developing sport for all Australians both at national and ‘grassroots’ level.

COMPPS GENERAL POSITION

In May 2018 following the announcement of the Government’s intended change to the tax treatment of fame or image income, COMPPS wrote to the Government to express its concern at the implications of the change and urge the Government to reconsider its decision. A copy of that correspondence is attached.

COMPPS reiterates the position set out in that letter and again urges the Government to reconsider its position. In summary, while intended to address perceived integrity concerns in the Australian tax system as it relates to high profile individuals, the overall effect of this change will be detrimental to the Australian sporting landscape as a whole. This will arise from the practical effects of the change. By depriving sportspeople the ability to structure their tax affairs in a way that fairly reflects the significant value of their image rights as professional sportspeople, this measure will fundamentally weaken sporting bodies’ ability to both attract and retain athletes and grow their sports within Australia given the international marketplace in which sport operates. The impact will be two-fold and reflected in player movement both ways - it will see Australian sporting talent lost to foreign markets and it will adversely impact the ability of Australian sporting codes to attract international sporting talent to re-locate to Australia to participate in their competitions. Additionally the change will increase the payroll impost on Australian sporting employers with the flow-on effect of reducing their investment in sport as a whole.

COMPPS submits that there are unique aspects that apply when considering the impact of this change in the sports context and that if the Government does not propose to reconsider its overall position, that these distinguishing factors warrant consideration of an exemption or special measures (e.g. a prescribed safe harbour) to apply to sportspeople.

These unique factors are as follows:

- As distinct from the other “high profile individuals” listed in the Government’s consultation paper - celebrities, internet personalities and entertainers – the careers of sportspeople are inescapably time-limited. The career longevity of a professional sportsperson is typically significantly shorter than that of other performance artists or other individuals. Aside from the reality of the short playing lifespan that applies to all professional sportspeople there is the added risk and reality of those whose already naturally limited careers are cut short by injury. This very real factor places sportspeople in a different position in terms of their ability to earn income from their playing career and the use of their fame or image.
- From the perspective of the “labour market”, sport operates in a truly genuine global market and most importantly is competing in that market on a day-to-day sustained basis. The ability to both retain Australian sportspeople and attract international talent is particularly acute and real for Australian sporting codes as they are in a competition not simply for isolated acts, one-off performances or short tours but a

competition for sportspeople to base or relocate their lives (and their tax affairs) for extended periods of time – e.g. at least a season but often multi-year contracts. Thus the loss of this talent has a broad and sustained impact on the attractiveness of the respective leagues or competitions as a whole and their enjoyment by the Australian sporting public with a consequent impact on the sporting codes whose own financial models are underpinned by the market value and commercial appeal of those competitions.

- In the field of women's sport, Australia prides itself on being a leader. However, this ongoing leadership position cannot be assumed. Women's sport is witnessing significant growth in transitioning to professionalism and Australia (largely through the COMPPS members) is one of the countries at the vanguard of this movement. Notwithstanding, female professional sportspeople income remains below that of their male counter-parts. The ability for female sportspeople to avail themselves of modest tax concessions for fame or image income is an important element in enabling the transition from part-time semi-professional to full-time professional sportspeople.

For the above reasons, COMPPS urges reconsideration by the Government.

COMPPS SPECIFIC RESPONSE

Noting that COMPPS' primary position is as set out above, COMPPS makes the following specific comments in respect of the questions in the Government's consultation paper.

1. *The Government intends to implement a broad definition of fame or image. Do you consider that a broad definition of fame or image should be adopted? If so, why and what should this definition be? If not, what is the most appropriate alternative and what should it cover?*

COMPPS submits that the paramount objective is to ensure certainty. To that end, any definition, even if broad, must achieve that objective through clarity and precision in its expression, potentially supplemented with supporting guidance materials.

2. *The Government intends that the measure apply to anyone when they generate income from their fame or image. Should the measure target specific occupations or should it be limited or modified in some other way for particular groups? If so, what criteria should apply in defining the group or groups and how should it be limited or modified?*

Refer to COMPPS' primary position above highlighting the particular basis for an exemption or special measures to apply to professional sportspeople as a category of income earners.

In addition COMPPS makes the following comments:

Failing category exemption for sportspeople, the following limitations should be considered:

- Offering a legislated 'safe harbour' percentage under which professional sportspeople can freely licence their fame/image, with a necessity for a more rigorous/documentary process to utilise a higher percentage split (such as a private ruling by the ATO). If this

limitation was not acceptable to the Government, the following related alternatives should also be considered:

- Placing a “hard” cap (for example, 20%) of a person’s income permitted to be apportioned to fame/image and licensed. The Government could then reallocate resources towards policing and prosecuting any persons who structure their tax in a way which exceeds that permissible cap. This solution would have the benefit of allowing Australian sports to retain at least some of the competitive tax relief advantage currently available in Australia in the context of a competitive global labour market for athletes but provide the Government with a legislative tool to address integrity concerns arising from the perceived abuse of the current tax system by a relatively small number of high profile individuals.
- Implementing special tax advantages for professional sportspeople who choose to play out their careers in Australia rather than in more lucrative foreign markets (see Ireland example below).

3. Are there any matters relevant to particular groups that may need to be taken into account in the implementation or administration of this measure?

Yes – in two respects in the sporting context – firstly for the individual sportspeople themselves and secondly the general sporting and Australian public. These are inter-related and are addressed in turn:

Individual sportspeople

There are a number of matters relevant to professional athletes (in particular, those who are employed in sports where there are significant competing international labour market places, such as Rugby and Football), including:

- In other countries, specific tax relief, including protection of image rights, is provided to athletes in recognition of their short career span and risks of their career being cut short by injury. The Government has recognised this is the case in the United States and another example is in Ireland. Moreover, we note that no legislative action has taken place in the UK to date and the ability for UK residents to structure their use of image rights outside of the UK remains open. For Australia to impose legislative restrictions around use of image rights in contrast to these and other key market places for athletes will provide a disincentive for athletes who compete internationally or participate in a global labour market to structure their tax affairs in Australia. This will lead to fewer athletes choosing to live and carry out their profession in Australia as it will be a less attractive market.
- Some foreign countries go even further in protecting the financial interests of their athletes to keep them playing in their home countries. For example, in Ireland, sportspeople are entitled upon retirement to a 40% deduction from total assessable income for up to any 10 of the years they have played sport in Ireland. Professional sportspeople with lower earning power benefit most from the scheme. The Australian Government should consider implementing a similar solution to provide some incentive (albeit limited) for athletes to live and work (and pay tax) in Australia during their career.

Sporting codes, the sports community and general public

Yes, as noted above, in the sports context the implications of this change would reach beyond those for the individual taxpayer to the sporting codes and ultimately the Australian sporting community and general public. In the event that the legislative change is made, given the position that exists in several other overseas jurisdictions whereby professional sportspeople are able to licence their image to a related entity and derive preferential tax treatment of relevant income, sports and sporting organisations in Australia may be placed at a material disadvantage as compared to sports and sporting organisations in those other jurisdictions insofar as their ability to compensate athletes and thus attract/retain those athletes.

An unintended indirect consequence will be the undermining of sporting organisations (predominantly not-for-profit organisations) to support the growth and development of sport in Australia, as more players move overseas and/or payments to those players increase as a result of the proposed changes. Ultimately sporting organisations will have to pay more in order to retain players in Australia, as the comparative financial incentive for them to play overseas becomes ever wider. The flow-on effect of this is the impact it will have on the quality of our competitions (and therefore the competitiveness of our teams and their overall appeal to fans and commercial partners), our standing in international sport and therefore the overall value of our codes. This in turn, will have a financial impact, affecting sports' overall investment capacity.

In the COMPPS sports in particular, there has been a huge push towards increased female participation and the professionalisation of the women's game. Generally speaking, salaries of female athletes in sport remain far less than their male counterparts. The proposed tax change will apply to all players regardless of their income, and this will have a proportionally larger negative impact on women, for which the current tax relief is modest but greatly appreciated.

- Given current tax treaties and source income rules, does the measure provide an appropriate framework for taxing amounts paid in respect of an individual's fame or image in Australia?

COMPPS makes no comment on this question.

- The Government intends the measure to apply from 1 July 2019. Does the commencement date provide a suitable period for individuals to comply with the new law? If not, why?

No. This is not sufficient in the sporting context where affairs and financial planning on the part of both individuals and organisations are based around multi-year contracts, including collective bargaining agreements. In the event that the legislative change is made, it potentially will have a significant adverse effect on the finances of and personal finance structures adopted by a large number of professional sportspeople. It is likely to lead to calls for salary renegotiations for sporting organisations and athletes in respect of contracts that have been previously agreed, often for terms spanning many years into the future. As such there should be a grandfathering for pre-existing contracts and/or at least a 3 year transition period to allow such changes to be addressed including by the restructuring of personal finances and to allow there to be consideration/renegotiation of relevant contractual terms.

For the sporting codes themselves, there will also be a detrimental payroll tax impact, including for payroll tax calculation on existing agreements. This as a minimum should be mitigated through a grandfathering/transitional period.

6. *The Government is not intending to provide any special transitional or grandfathering arrangements. If grandfathering or a transitional period was put in place, what would be a suitable time period?*

In the event that the legislative change is made and subject to any limitations/exemptions as proposed, for the reasons noted above grandfathering and/or transitional arrangements for sportspeople and sporting codes would be absolutely essential. Given the nature of sporting contracts, at least three years would be required.

7. *Are there any significant capital gains tax consequences that may need to be taken into account in the implementation and administration of the measure?*

COMPPS makes no comment on this question.

Yours sincerely

The Coalition of Major Professional and Participation Sports
Suite 607
530 Little Collins Street
Melbourne VIC 3000

A handwritten signature in black ink that reads "Jo Setright". The signature is fluid and cursive, with "Jo" on top and "Setright" below it, slightly overlapping.

Jo Setright
Executive Director, Policy