



## Class Ruling

### Income tax: Exempt Income – ACCV Cancer Research Vacation Studentships

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#### **Preamble**

*The number, subject heading, and the **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 IVAAA 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**

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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, 51-1, 51-10 and 51-35 of the *Income Tax Assessment Act 1997* ('ITAA 1997').

##### **Class of persons**

3. The class of persons to whom this Ruling applies is undergraduate students who obtain Cancer Research Vacation Studentships with the Anti-Cancer Council of Victoria (ACCV).

##### **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 described below at paragraphs 9 to 14 is carried out in accordance with the details of the arrangement provided in this Ruling.

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

- a) 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
- b) this Ruling may be withdrawn or modified.

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## Date of effect

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8. This Ruling applies from 1 December 2001. However, 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 (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- it is not later withdrawn by notice in the *Gazette*; or
- it is not taken to be withdrawn by an inconsistent later public ruling; or
- the relevant tax laws are not amended.

## Arrangement

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9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. 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 parts of documents incorporated into this description of the arrangement are:

- Correspondence from the ACCV dated 20 September 2001; and
- Application for Class Ruling dated 22 October 2001.

10. The ACCV provides Cancer Research Vacation Studentships to undergraduates with the object of stimulating interest in Cancer Research in Victoria.

11. Undergraduate students enrolled in relevant disciplines at any Victorian University are eligible to apply. Students are not eligible after completing their final year, except for 3<sup>rd</sup> year science students who are proceeding to the fourth year of an honour's degree.

12. The Studentships run for up to a maximum of six weeks during the summer vacation, with successful applicants to receive, by way of example, \$175 per week for the 2001/2002 Studentships.

13. The Studentships involve working as part of a cancer research program being conducted at a university or other research organisation. Preference is given to applications involving work within research programs already receiving funding from the Anti-Cancer Council.

14. Successful applicants are required to write a short report on their placement covering the work carried out and the benefits and experience gained from the studentship.

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## **Ruling**

15. The payments made under the Cancer Research Vacation Studentships are ordinary income under subsection 6-5(1) of the ITAA 1997.

16. However, the payments described in the preceding paragraph when paid to full-time students at a school, college or university are exempt from income tax by the operation of sections 51-1 and 51-10 of the ITAA 1997.

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## **Explanations**

### **Ordinary income**

17. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included as assessable income if it is income according to ordinary concepts (ordinary income).

18. Payments made under the Cancer Research Vacation Studentships are treated as ordinary income due to the periodical nature of the payments (*FC of T v Ranson* (1989) 86 ALR 267; (1989) 89 ATC 4353; (1989) 20 ATR 488 (the *Ranson Case*)).

## **Exempt income**

19. Section 51-1 of the ITAA 1997 exempts from income tax ordinary income and statutory income covered by tables in sections 51-5 to 51-30.

20. Item 2.1A of the table in section 51-10 of the ITAA 1997 provides an income tax exemption in relation to payments:

- to a full-time student at a school, college or university;
- made by way of a scholarship, bursary, educational allowance or educational assistance;
- that are not subject to the exceptions set out in section 51-35 of the ITAA 1997.

## **Are studentship holders full-time students at a school, college or university?**

21. The studentships are only provided to undergraduate students enrolled in relevant disciplines at any Victorian University. Students are not eligible after completing their final year, except for 3<sup>rd</sup> year science students who are proceeding to the fourth year of an honour's degree. It is accepted that studentship holders are students at a university. The fact that the studentship holders are on university vacation does not alter their status as students at a university.

22. The 'Guide to Applicants' does not specify that students need to be enrolled on a full-time basis. It is accepted that in most if not all cases, the student will be a full-time student. In the event that a scholarship is offered to a part-time student it would not be exempt under section 51-10 of the ITAA 1997.

## **Are the payments made by way of a scholarship, bursary, educational allowance or educational assistance?**

23. The words 'scholarship, bursary, educational allowance or educational assistance' are not defined in Division 51 of the ITAA 1997. The Macquarie Dictionary, 2nd Revised Edition, defines 'scholarship' as 'the sum of money or other aid granted to a scholar', and 'scholar' as 'a student; who, because of merit, etc., is granted money or other aid to pursue ... studies'.

24. Paragraphs 34 to 45 of Taxation Ruling TR 93/39 discuss the meaning of the words 'scholarship, bursary, educational allowance or educational assistance' for the purposes of the former paragraph 23(z) of the ('ITAA 1936'). Paragraph 35 of TR 93/39 states that the words are no more 'than a description of rewards for merit attained as a result of competition or selection on the basis of general criteria'.

25. In interpreting the meaning of the words ‘scholarship, bursary, educational allowance or educational assistance’, courts have determined that relevant characteristics of a scholarship include:

- the selection of recipients based on merit or some other rational criterion (*Re Leitch, deceased*, 1965 VR 204), and
- the education of the recipient is at least one purpose for which the scholarship is provided (*FC of T v. Hall* (1975) 75 ATC 4156).

**Is selection based on merit or some other rational criterion?**

26. The application process for the studentships includes submission of full examination results by recipients, and the requirement for a written acceptance by the Head of Department (or other senior person) at the relevant university.

27. Only a limited number of studentships are made available with, by way of example, approximately 20 studentships on offer for the 2001/2002 period.

28. It is accepted that applicants for the studentships are subject to a competitive process and that the studentships are granted on merit.

**Is education of the recipient at least one purpose for which the scholarship is provided?**

29. The studentships provide a number of educational benefits for recipients such as increased knowledge and experience in their particular field of study.

30. Restriction of the studentships to undergraduates in relevant disciplines connotes an educational purpose. The placements that studentship holders obtain are not in the nature of employment.

31. There is an educational purpose behind the provision of the studentships.

**Do the exceptions in section 51-35 apply?**

32. Section 51-35 of the ITAA 1997 excludes the following payments from exemption:

- payments by the Commonwealth for education or training: paragraphs 51-35(a), (b) and (f);
- payments made on the condition that the student will (or will if required) become an employee of, or enter

into a labour contract with, the payer: paragraphs 51-35(c) and (d); or

- payments made under a scholarship that is not provided principally for educational purposes: paragraph 51-35(e).

33. None of these exceptions apply to the studentship payments made under the terms of this arrangement.

### **Is the payment a Commonwealth education or training payment?**

34. Notwithstanding any Commonwealth funding the ACCV, a university in Victoria or research organisation may receive, the studentship payments are not education or training payments made by the Commonwealth. The studentship payments are not education entry payments under Part 2.13A of the *Social Security Act 1991*.

### **Is the payment made on the condition that the student enter into employment or a contract for labour with the payer?**

35. In the *Ranson Case*, the Federal Court held that an exemption does not apply where, as a matter of ordinary language, it can be said that the receipt of the scholarship amount is conditional on the recipient working with the payer if the payer so requires.

36. Under the terms of this arrangement, the ACCV is not conducting the research, and the recipients of the studentships are not employees of the ACCV. The studentship holders have no right or expectation of future employment with the ACCV. Rather, the ACCV is stimulating cancer research by the provision of studentships which are to be conducted at universities and research organisations that are independent of the ACCV.

37. The recipients of studentships are required to submit a short report to the ACCV on their placement. The primary purpose of this report is to enable ACCV to evaluate whether the provision of studentships is an effective means to encourage and support students who may choose to enter the career of cancer researcher. Paragraph 7 of Taxation Ruling IT 2581 states that the lodging of a 'progress report does not constitute a requirement to perform work for the scholarship provider'. The short report provided by the studentship holder on their placement is considered to be of a similar nature to a progress report and is accepted as not being the performance of work for the ACCV.

**Is the amount provided principally for educational purposes?**

38. The studentships are only provided to undergraduate students enrolled in relevant disciplines at any Victorian University.

39. Students are not eligible after completing their final year, except for 3<sup>rd</sup> year science students who are proceeding to the fourth year of an honour's degree.

40. While the research activities performed during the studentship placements may not be formally assessed, it is accepted that the studentships provide a number of educational benefits for recipients such as increased knowledge and experience in their particular field of study.

41. The payments made under the terms of this arrangement are not excluded from exemption by paragraph 51-35(e) of the ITAA 1997.

**Cross references of provisions**

42. A reference in this ruling to sections 6-5 and section 8-1 of the 1997 Act expresses the same ideas as subsection 25(1) and subsection 51(1) of the ITAA 1936 respectively. A reference to item 2.1A of section 51-10 of the 1997 Act expresses the same ideas as paragraph 23(z) of the ITAA 1936.

**Detailed contents list**

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

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**Commissioner of Taxation**

27 February 2002

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| <i>Previous draft:</i>                      | - ITAA 1997 51-5                    |
| Not previously issued in draft form.        | - ITAA 1997 51-10                   |
|                                             | - ITAA 1997 51-30                   |
| <i>Related Rulings/Determinations:</i>      | - ITAA 1997 51-35                   |
| TR 92/1; TR 93/39; TR97/16                  | - ITAA 1997 51-35(a)                |
| IT 2581; CR 2001/1                          | - ITAA 1997 51-35(b)                |
|                                             | - ITAA 1997 51-35(c)                |
|                                             | - ITAA 1997 51-35(d)                |
| <i>Subject references:</i>                  | - ITAA 1997 51-35(e)                |
| - Exempt income                             | - ITAA 1997 51-35(f)                |
| - Cancer Research Vacation-<br>Studentships | - SSA 1991 2.13A                    |
| - Summer Vacation Scholarships              | <i>Case references:</i>             |
|                                             | - FC of T v. Hall (1975) 6 ALR 457; |
| <i>Legislative references:</i>              | (1975) 75 ATC 4156; (1975) 5 ATR    |
| - TAA 1953 Part IVA                         | 450                                 |
| - ITAA 1936 23(z)                           | - FC of T v. Ranson (1989)          |
| - ITAA 1936 51(1)                           | 86 ALR 267; 89 ATC 4353; (1989)     |
| - ITAA 1997 6-5                             | 20 ATR 488                          |
| - ITAA 1997 6-5(1)                          | - Re Leitch, deceased, 1965 VR 204  |
| - ITAA 1997 8-1                             |                                     |
| - ITAA 1997 25(1)                           |                                     |
| - ITAA 1997 51-1                            |                                     |

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ATO References

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