



Class Ruling

Income tax: The General Sir John Monash Awards – Post Graduate Scholarships

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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

1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax laws’ 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 which this Ruling applies is full time students who receive a post-graduate scholarship from The General Sir John Monash Foundation (the Foundation).

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 below at paragraphs 9 to 19 in this Ruling.

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

- 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- this Ruling may be withdrawn or modified.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 2003. 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 and 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- it is not later withdrawn by notice in the Gazette;
- it is not taken to be withdrawn by an inconsistent later public ruling; or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 documented conversations. 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:

- Application for Class Ruling dated 6 August 2003;

- Brief on The General Sir John Monash Foundation & Awards;
- Foundation Annual Report 2002;
- *An Endorsement As An Income Tax Exempt Charitable Entity* from the Commissioner of Taxation dated 15 May 2002;
- Record of further information provided in a conversation with a representative of the Foundation; and
- Draft Scholarship Agreement provided by a representative of the Foundation.

10. The Foundation is incorporated as a charitable (educational) organization for the purposes of promoting Australia's heritage and values, recognising excellence in academic achievement and encouraging the pursuit of knowledge. In particular, the Foundation seeks to raise funds for, establish and administer *The General Sir John Monash Awards* (the Awards).

11. The Awards are post-graduate scholarships for Australian citizens to undertake full time study in any field for up to three years at leading overseas universities appropriate to their endeavours. They are intended to be Australia's equivalent of the British Rhodes scholarships and the American Fulbright programme. It is anticipated that Award winners will become leaders in their fields and of their communities.

12. The Foundation is a tax exempt organisation and has been granted tax deductible gift recipient status. The Federal Government is providing funding for the first 32 Awards as well as providing initial administrative funding support. It will also match private sector donations over 3 years to a maximum of \$5m. Some donors or 'Award Supporters' may provide the funding for one or more of the Awards, in which case they are acknowledged as being associated with the Award/s and specifically recognised by the Foundation for their support.

13. The Foundation plans to offer 8 Awards per year to enable students (Award scholars) to further their studies abroad leading to the degree of Ph.D /D.Phil or equivalent or to a relevant professional Masters Degree. There is no restriction on the fields of study, gender or age of applicants. However, it is anticipated that most Award scholars will be recent graduates. The inaugural Award scholars are expected to be announced in December 2003 and take up their Awards in 2004.

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14. The Awards will provide a benefit of \$50,000 per annum for up to three years. This amount, which is expected to be used for such outgoings as enrolment and tuition fees, travel expenses, project costs and general living expenses etc., will be in instalments of \$25,000 paid every six months. Each instalment will be paid into the Award scholar's bank account in Australia but are subject to confirmation of enrolment and the commencement and satisfactory progress of the Award scholar's study. In the final year of the scholarship, an amount of \$5,000 will be withheld from the final instalment. The \$5,000 will be paid on completion of the Award programme and provision of a final Academic Report from the relevant university.

15. In some cases applicants may undertake studies at the overseas university for periods greater or less than 3 years. Where greater than 3 years the funding under the scholarship is restricted to a maximum of 3 years and where less, the funding will match the period of study.

16. State and Territory Selection Panels will receive and consider applications, interview applicants and recommend a number of selected nominations to the National Awards Committee of the Foundation in accordance with a nominations quota for each of the States and Territories. The National Awards Committee, which includes a representative of the Federal Minister for Education, will then interview a shortlist of nominees and select the winners for approval by the Board of the Foundation.

17. Selection for the Awards will be primarily based on merit having regard to the following selection criteria:

- Australian citizenship;
- Outstanding levels of academic excellence;
- Demonstrated leadership qualities;
- Altruism demonstrated through community service; and
- A well defined study programme in any field listed in an overseas University's academic offerings leading to the degree of PH.D/D.Phil or equivalent or to a relevant professional Masters Degree.

18. Award scholars are required to provide the Foundation with regular Academic Reports including a final Academic Report on completion of the Award programme. The Academic Reports are reports in writing, including in electronic format, from the relevant university of the Award scholars progress under the study programme. The Reports must contain sufficient detail to enable the Foundation to determine whether the studies are progressing in such a way as to justify further payments under the Award. These reports may be used by the Foundation for promotional purposes and as the basis for general progress reports to Award Supporters. Also the Award

scholars are required to use the Award funds for the purposes granted and acknowledge the assistance given by the Foundation. Some accounting for the use of the funds provided under the scholarships may be required of the Award scholars.

19. It is not a condition of the Awards that the Award scholars will (or will if required) engage in employment or enter into a contract for labour with the Foundation or any donors/Award Supporters either during or after the programme.

Ruling

20. The amounts paid to Award scholars under The General Sir John Monash Awards are considered ordinary income and therefore in principle, assessable income under subsection 6-5(1) of the ITAA 1997. However, the amounts will be exempt from income tax under Item 2.1A of, section 51-10 of the ITAA 1997 when paid to a full-time student.

Explanation

21. 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

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

23. 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.

24. 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.

25. The payments made to Award scholars are considered to be ordinary income. They are made periodically, and will provide the recipients with a degree of financial support while undertaking a course of study. They are a financial resource that the recipients can rely upon and apply to meet costs associated with their studies or to meet their living needs (see paragraph 14).

26. As the payments are considered to be ordinary income, it is not necessary to consider whether they could also be statutory income.

Exempt income

27. Subsection 6-20(1) of the ITAA 1997 provides that an amount of ordinary income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

28. Certain amounts of ordinary income are exempt from income tax under section 51-1 of the ITAA 1997 if the amount is of a type listed in Division 51 of the ITAA 1997.

29. In Division 51 of the ITAA 1997 at Item 2.1A of the table in section 51-10, payments are exempt from income tax if they are made:

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

Are the payments made to full-time students at a school, college or university?

30. The Award will only be paid to students enrolled in a full time post-graduate degree course at an overseas university.

31. Under the Award, regular instalments will be paid to the Award scholars every six months whilst they are enrolled with the university as a full time student.

32. A final payment of \$5,000 will be withheld from the Award scholar until such time as an Academic Report is provided to the Foundation on completion of the Award programme. Whilst this payment may be made at a time when the Award scholar is no longer formally enrolled as a full time student, it is considered, having regard to the nature, purpose and payment structure of the Award, that it retains its character as a payment to a full time student. It is part of a series of payments made for and in respect of the undertaking by the student to engage in a programme of full time study. An analogy can be drawn with payments made by an employer to a former employee in respect of wages owing. These amounts retain the same character as any previous payment of wages, being a payment made by the employer for employment or services rendered, even though the employment has ceased (see *Case A9 69 ATC 49*; (1969) 14 CTBR (NS) 550).

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

33. The words 'scholarship, bursary, educational allowance or educational assistance' are not defined in the ITAA 1997. The Macquarie Dictionary, 2nd Revised Edition, defined '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'.

34. 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 subsection 23(z) of the *Income Tax Assessment Act 1936* (the antecedent of section 51-10 of the ITAA 1997). 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'.

35. In interpreting the meaning of the words ‘scholarship, bursary, educational allowance or educational assistance’, the courts have determined that the 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) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450).

36. There will be a limited number of Awards available each year and Award scholars will be selected on the basis of a written application and an interview. The nominations to the National Awards Committee are also limited in accordance with a set quota for each of the States and Territories. It is accepted that applicants for the Awards are subject to a competitive process and that the Awards are granted on merit.

37. The Awards are provided to students to enable them to further their studies at the world’s best universities. There is an educational purpose behind the provision of the Awards. The payments are therefore made by way of a scholarship, bursary, educational allowance or educational assistance.

Do the exceptions in section 51-35 of the ITAA 1997 apply?

38. Section 51-35 of the ITAA 1997, broadly stated, excludes the following payments from exemption:

- payments by the Commonwealth for education or training: paragraphs 51-35(a), (b) and (f) of the ITAA 1997;
- 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) of the ITAA 1997; and
- payments made under a scholarship that is not provided principally for educational purposes: paragraph 51-35(e) of the ITAA 1997;

Are the payments Commonwealth education or training payments?

39. Paragraph 51-35(a) of the ITAA 1997 excludes from income tax exemption, Commonwealth payments for secondary education assistance or in connection with the education of isolated children. The Award payments are not payments of this kind.

40. Paragraph 51-35(b) of the ITAA 1997 excludes from exemption, Commonwealth education or training payments, as defined in section 52-145 of the ITAA 1997. Section 52-145 denies an exemption to certain pensions, benefits and allowance paid by Centre link. The Award payments are not payments of this kind.

41. Paragraph 51-35(f) of the ITAA 1997 excludes from exemption scholarship payments that are education entry payments under Part 2.13A of the *Social Security Act 1991*. The Award payments are not payments of this kind.

Are the payments made on the condition that the student will (or will if required) enter into an employment contract or a contract for labour with the payer?

42. Paragraphs 51-35(c) and (d) of the ITAA 1997 exclude payments from exemption if they represent:

- (c) a payment by a person or an authority on the condition that the student will (or will if required) become, or continue to be, an employee of the person or authority; and
- (d) a payment by a person or an authority on the condition that the student will (or will if required) enter into, or continue to be a party to, a contract with the person or authority that is wholly or principally for the labour of the student.

43. The Award scholars will not be required to be, or become, employees of the Foundation or an Award donor/supporter. They also will have no right or expectation of future employment with the Foundation or any other party.

44. Regular Academic Reports as to satisfactory progress, or otherwise, and a final Academic Report from the relevant university are required to be provided to the Foundation by the Award scholar. These reports may be used by the Foundation for promotional purposes and as the basis for general progress reports to Award Supporters etc. The provision of the reports is essentially to determine whether the studies are progressing in such a way as to justify further payments under the Award. The provision of the progress reports is not considered to constitute a requirement to perform work for the scholarship provider (see Taxation Ruling IT 2581).

45. The Award scholars are not required to enter into a contract for labour with the Foundation or any other party. The Award payments are not excluded from exemption under either of paragraphs 51-35(c) or (d) of the ITAA 1997.

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Are the scholarships provided principally for educational purposes?

46. The Awards will only be provided to students who are enrolled in a full time post graduate degree course or its equivalent at an overseas university.

47. Payment of the Award is to enable Award scholars to undertake their post graduate studies.

48. As such, the payments made under the terms of this arrangement are provided principally for educational purposes and are not excluded from exemption by paragraph 51-35(e) of the ITAA 1997.

Conclusion

49. None of the exclusions in section 51-35 of the ITAA 1997 apply to the Award payments and therefore, the Award payments are exempt from income tax under sections 51-1 and 51-10 of the ITAA 1997.

Detailed Contents List

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Commissioner of Taxation

17 December 2003

Previous Draft:

Not previously issued in draft form.

- ITAA 1997 51-1

- ITAA 1997 51-10

- ITAA 1997 51-35

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 93/39;

TR 97/16; CR 2001/1; IT 2581

- ITAA 1997 51-35(a)

- ITAA 1997 51-35(b)

- ITAA 1997 51-35(c)

- ITAA 1997 51-35(d)

- ITAA 1997 51-35(e)

Subject references:

- exempt income

- post graduate scholarships

- scholarships

- ITAA 1997 51-35(f)

- ITAA 1997 52-145

- Social Security Act 1991 2.13A

- Copyright Act 1968

Legislative references:

- TAA 1953 Pt IVA

- ITAA 1936 23(z)

- ITAA 1997

- ITAA 1997 6-5

- ITAA 1997 6-5(1)

- ITAA 1997 6-20(1)

- ITAA 1997 Div 51

Case references:- FC of T v. Hall; (1975) 6 ALR 457;
75 ATC 4156; (1975) 5 ATR 450.

- Re Leitch, deceased [1965] VR 204

- Case A9 69 ATC 49; (1969) 14

CTBR (NS) 550

ATO references

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