



Class Ruling

Income tax: Defence Science and Technology Organisation Industry Experience Placements

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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 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, 6-20, 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 tertiary students who obtain an Industry Experience Placement from the Defence Science and Technology Organisation (DSTO).

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 20 in this Ruling.

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

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- (b) this Ruling may be withdrawn or modified.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

8. This Ruling applies from 1 July 2003. 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- it is not later withdrawn by notice in the Gazette;
- it is not taken to be withdrawn by an inconsistent later public ruling; or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. 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 23 October 2003; and

- The October 2003 version of the Industry Experience Placement Agreement.

10. DSTO is the scientific research and development arm of the Department of Defence.

11. Each year, commencing in 2003, DSTO will offer a number of Placements to students who are required to undertake an Industry Experience Placement that is to be assessed as part of completing their course of study. Many students are required to undertake 'Sandwich' courses or Industry Placements as a formal component of their degree.

12. Eligibility to receive an Industry Experience Placement (also referred to in this Ruling as Industry Placement or Placement) will be restricted to students who are enrolled full-time at a tertiary institution and it is a requirement of the degree that the student undertake a practical placement with industry. Students that are not enrolled on a full-time basis are not eligible.

13. Universities actively seek Industry Placements for students at different times throughout the year and advertise through a variety of media. Therefore, the number, timing and duration of Placements offered to such students will vary widely, and will be negotiated on a case by case basis between DSTO, the individual students and their University Placement Coordinators. DSTO's priority in placing students will be based on academic performance, and all scholarship recipients:

- Must be Australian citizens; and
- Must undergo a defence security clearance that will enable them to enter DSTO establishments.

14. The primary objective of the program is to support the education of promising tertiary students by providing them with a means by which they can satisfy the formal requirement of their degree that they complete an Industry Placement. The principle aim of the Placement is to provide students with an opportunity to:

- a) Demonstrate the practical application of their academic knowledge;
- b) Be exposed to general business and professional practices in the work place; and
- c) Better understand the complexity of the work environment (for example, relationships with colleagues, an employer's expectations and working to real deadlines).

15. DSTO will allocate participating students a discrete program of research that is closely aligned with their current course of study. A member (or members) of DSTO's research staff will be allocated to

each student as their supervisor. The students will be expected to work on-site at one of DSTO's Laboratories using DSTO research equipment and facilities under local supervision by DSTO staff and produce research findings. An agreed timetable of when and how long each student will be expected to attend the DSTO will be determined in accordance with the University's academic schedule.

16. As a minimum requirement, the students will be expected to produce a report at the conclusion of the placement containing details of the research they have conducted.

17. At the completion of the Placement the student's DSTO supervisor will provide critical feedback to the student's University for the purposes of formal assessment.

18. The recipient will receive a monetary payment, paid as a fortnightly stipend. The stipend is financial assistance provided to the student as an allowance to enable the student to undertake a placement at DSTO in order to obtain practical experience by assisting DSTO in conducting research. In most cases, the University Placement coordinator will set the remuneration package for students seeking Industry Experience Placements, with some universities negotiating terms on a case-by-case basis. The agreed amount in each case will be paid to the individual recipient as a fortnightly stipend for the tenure of the Placement with DSTO.

19. The Industry Experience Placement that DSTO is proposing to offer to students does not contain any conditions that would require the recipient to become an employee of DSTO at any stage in the future. For the purpose of the scholarship students will not be employed by the DSTO and will not therefore, be entitled to any conditions of employment such as paid leave. The students will fall within the scope of the directors and officers cover and personal accident cover provided under the Department's standing Comcover Schedule as a precaution against possibility of incurring an unfunded legal liability should a claimable incident occur.

20. All intellectual property generated by the student during and in connection with the placement vests upon its creation in the Commonwealth.

Ruling

21. The payments made by the DSTO under the Industry Experience Placements are considered ordinary income and therefore in principle, assessable income under subsection 6-5(1) of the ITAA 1997. However, these payments will be exempt from income tax under Item 2.1A in the table in section 51-10 of the ITAA 1997.

Explanation

22. 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

23. 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).

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. Payments made by the DSTO under the Industry Experience Placements are considered to be ordinary income as they are periodical payments and are depended upon by the recipient (*Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652).

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 covered by the tables in Division 51 of the ITAA 1997.

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

- to a full-time student at a school, college or university;
- made by way of a scholarship, bursary, educational allowance or educational assistance;
- subject to the exceptions set out in section 51-35 of the ITAA 1997.

These three conditions are discussed below.

Are scholarship holder's full-time students at a school, college or university?

30. Yes. The scholarships will only be awarded to full-time students enrolled at a tertiary education institution and it is a requirement of the degree that the student undertake a practical placement with industry. Students that are not enrolled on a full-time basis are not eligible.

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

31. The words 'scholarship, bursary, educational allowance or educational assistance' are not defined in 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'.

32. 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 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'.

33. In interpreting the meaning of the words 'scholarship, bursary, educational allowance or educational assistance', 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 (*Halls Case*)).

34. A number of Placements will be made available each year and recipients will be selected on the basis of academic merit by DSTO through a competitive selection process.

35. The recipient will receive a monetary payment, paid as a fortnightly stipend. The stipend is financial assistance provided to the student as an allowance to enable the student to undertake a placement at DSTO in order to obtain practical experience by assisting DSTO in conducting research.

36. The purpose of providing the student with an Industry Experience Placement is to provide the student with a means by which they may satisfy the formal requirement of their tertiary education that they complete practical experience in a research area related to their course of studies.

37. In *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362 (at 385-6) Isaacs J said that for purposes to be educational they must provide for the giving or imparting of instruction. Rath J in *Halls case* held that research conducted under supervision at a university is institutional in character and therefore educational.

38. The Placements are provided for the purpose of providing the students with research experience in their chosen field and to allow them to complete their course industry placement requirement.

39. Therefore, it is accepted that there is an educational purpose behind the provision of the Placements. The payments are therefore made by way of a scholarship, bursary, educational allowance or educational assistance.

Do the exceptions in section 51-35 apply?

40. 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) 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?

41. 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 Placement payments are not payments of this kind.

42. 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. The Placement payments are not payments of this kind.

43. 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 Placement payments are not payments of this kind.

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

44. 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;
- (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.

45. The Placement recipients will not be required to be, or become, employees of the DSTO. The award of the Placement does not confer a right to or expectation of future employment with the DSTO.

46. The recipient will undertake supervised research on-site at DSTO establishments, using DSTO research equipment and facilities and produce research findings. The Placement recipients will also be required to prepare a report for DSTO at the conclusion of the Placement containing details of the research they have conducted.

47. All intellectual property generated by the student during and in connection with the Placement vests upon its creation in the Commonwealth. This is not considered to constitute a requirement to perform work for the scholarship provider under a contract for labour.

48. The Industry Experience Placements recipients will not be required to enter into a contract for labour with the DSTO.

Are the scholarships provided principally for educational purposes?

49. The Industry Experience Placements will only be provided to students who are enrolled at a tertiary education institution.

50. The stated purpose of the Industry Experience Placements is to enable the recipients to engage in and gain experience in scientific research. DSTO will appoint a supervisor for the duration of the placement. In addition the payment will only be provided to a student who is 'required to undertake research that is assessed as part of completing their course of study'. The primary objective of the Industry Experience Placement is to provide the recipient with a means by which they may complete the formal requirement of their tertiary degree that they undertakes research and obtains experience in a research related to their course of studies. It is not provided as a fee for services rendered.

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

Conclusion

52. None of the exclusions in section 51-35 of the ITAA 1997 apply to the scholarship payments.

Detailed contents list

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Commissioner of Taxation

21 January 2004

<i>Previous draft:</i>	- ITAA 1997 51-1
Not previously released in draft form	- ITAA 1997 51-10
	- ITAA 1997 51-35
<i>Related Rulings/Determinations:</i>	- ITAA 1997 51-35(a)
TR 92/1; TR 92/20; TR 93/39;	- ITAA 1997 51-35(b)
TR 97/16; CR 2001/1	- 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)
- post graduate research	- ITAA 1997 52-145
- scholarships	- Social Security Act 1991 2.13A
	- Copyright Act 1968
<i>Legislative references:</i>	<i>Case references:</i>
- TAA 1953 Pt IVA	- FC of T v. Hall (1975) 6 ALR 457;
- ITAA 1936 23(z)	75 ATC 4156; (1975) 5 ATR 450
- ITAA 1997 Div 51	- Re Leitch, deceased [1965] VR 204
- ITAA 1997 6-5	- Chesterman v. Federal Commissioner
- ITAA 1997 6-5(1)	of Taxation (1923) 32 CLR 362
- ITAA 1997 6-20	
- ITAA 1997 6-20(1)	

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FOI status: **may be released**

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- Federal Commissioner of Taxation v. 5322; (1989) 20 ATR 1652
Ranson (1989) 25 FCR 57; 89 ATC

ATO References

NO: 2004/000542
ISSN: 1445 2014