



Class Ruling

Income tax: Indigenous Training and Recruitment Initiatives Scholarships

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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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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 51-10 of the ITAA 1997;
- section 104-25 of the ITAA 1997;
- section 118-20 of the ITAA 1997; and
- section 118-37 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is full-time students who occupy university places funded by the Victorian Government under an Indigenous Training and Recruitment Initiatives (INTRAIN) Scholarship. In this Ruling, a person belonging to this class of entities is referred to as a student.

Qualifications

4. The Commissioner makes this Ruling based 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 9 to 22 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 applies from 1 July 2010 to 30 June 2016. The Ruling continues to apply after 30 June 2016 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them, form part of and are to be read with the description:

- Class Ruling application, dated 28 April 2010;
- INTRAIN Scholarship Funding Agreement Terms and Conditions; and
- Department of Health Guidelines for Applicants.

Note: certain information has been provided by the applicant on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.

10. The INTRAIN Scholarship Scheme is funded by the Department of Health (DH) on behalf of the Victorian Government. DH provides funding to appropriate universities that allocate the scholarship to eligible students.

11. The main objective of the INTRAIN Scholarship is to increase the number of public health practitioners among Aboriginal and Torres Strait Islander people.

12. To apply for an INTRAIN Scholarship, applicants must be enrolled in a post-graduate program that has a major focus on public health issues.

13. A person is eligible to apply for an INTRAIN Scholarship if the person:

- is of Australian Aboriginal or Torres Strait Islander descent; and
- identifies as an Australian Aboriginal or Torres Strait Islander; and
- is accepted as such by the community in which he/she lives or has lived; and
- resides in Victoria or will live in Victoria upon completion of their course.

14. The INTRAIN Scholarship is awarded to applicants based on merit with consideration to:

- the applicant's involvement with, and connection to, the Koori community;
- evidence of professional commitment to the health of the Aboriginal and Torres Strait Islander community and assessed potential to contribute to evidence-based practice in the future;
- past academic results and assessed ability to complete the course; and
- referee reports.

15. A full-time INTRAIN Scholarship provides an annual stipend of \$25,470, paid to the student on a fortnightly basis for the duration of the course of study, subject to satisfactory progress.

16. A Doctoral student is also eligible for an additional payment of up to \$3,000 for the duration of the course of study to cover conference travel and registration, professional development and other costs associated with the study program. This additional payment is made by way of a reimbursement of expenses by the university and it is funded by DH.

17. The university is responsible for the student's academic supervision.

18. Students may be required to work part-time to practice their academic skills during their course of study. Work patterns are varied and dependent on individual student's study work load. Most students would be paid for this work by the relevant employer.

19. Students may be permitted to undertake paid employment outside the requirements of the approved course of study but they will need the approval of the university to undertake any such employment.

20. However, eligibility for the scholarship is not conditional upon the student agreeing to continue in or take up employment with the scholarship provider or any other organisation.

21. The scholarship will be terminated in the event of unsatisfactory academic performance by the student. Such a decision will be made by DH in consultation with the university. The scholarship will also be terminated if the student ceases to be enrolled in the university course.

22. If DH determines that a student has made a misrepresentation regarding their past and/or present circumstances that were relied upon by DH in awarding a scholarship, the student will be required to repay the full amount of the scholarship received if requested by DH.

Ruling

Fortnightly stipend payments

23. The fortnightly stipend payments made to students awarded an INTRAIN Scholarship, are assessable income to the student under subsection 6-5(1). However, these payments are exempt from income tax under item 2.1A in the table in section 51-10.

24. CGT event C2 under section 104-25 happens when students receive payments under the INTRAIN Scholarship program. However any capital gain made as a result of receiving the payments is reduced to nil under section 118-20.

Doctoral payment

25. The payment to Doctoral students of up to \$3,000 to cover conference travel and registration, professional development and other costs associated with the study program is not assessable to the student as ordinary income under section 6-5 or as statutory income under section 6-10.

26. CGT event C2 under section 104-25 happens when Doctoral students receive the payment of up to \$3,000. However, any capital gain or capital loss is disregarded under subsection 118-37(2).

Commissioner of Taxation13 April 2011

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.*

27. 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

28. Subsection 6-5(1) provides that the assessable income of a taxpayer includes income according to ordinary concepts (ordinary income).

29. The legislation does not provide specific guidance on the meaning of income according to ordinary concepts. However, a substantial body of case law exists which identifies likely characteristics.

30. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*,¹ the Full High Court stated:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

31. Amounts that are periodical, regular or recurrent, relied upon by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income, as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.² Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.³

¹ (1990) 170 CLR 124 at 138; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

² *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

³ *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; (1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 456 (per Fullagar J).

32. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁴ The whole of the circumstances must be considered⁵ and the motive of the payer may be relevant to this consideration.⁶

Statutory income

33. Section 6-10 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included as assessable income by another provision.

34. Section 10-5 lists provisions about statutory income and included in this list is section 15-2.

35. Section 15-2 includes in a taxpayer's assessable income the value of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to the taxpayer 'in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by' the taxpayer.

Exempt income

36. Subsection 6-20(1) 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.

37. Amounts of ordinary income and statutory income are exempt from income tax under section 51-1 if the amount is of a type listed in the tables in Division 51, subject to any exception or special condition.

38. Item 2.1A in the table in section 51-10 provides that payments are exempt from income tax if:

- (a) they are made to a full-time student at a school, college or university;
- (b) they are made by way of a scholarship, bursary, educational allowance or educational assistance; and
- (c) they are not subject to the exceptions set out in section 51-35.

⁴ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 375; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73; (1956) 6 AITR 248 at 254; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375 at 402; 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

⁵ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627-628 per Kitto J.

⁶ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

Fortnightly stipend payments

39. Fortnightly stipend payments received by a student are considered to be ordinary income, being periodical receipts that are expected and relied upon by the student.

40. As the fortnightly stipend payments are ordinary income, it must be established whether or not they are exempt income under Division 51. This requires a consideration of three conditions.

Are scholarship holders full-time students at a school, college or university?

41. In these circumstances, it is accepted that the INTRAIN Scholarship students undertaking the full-time study program at the University satisfy this criteria.

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

42. The words 'scholarship, bursary, educational allowance or educational assistance' are not defined in the ITAA 1997. The *Macquarie Dictionary*, 1991, 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'. 'Student' is defined as 'one who is engaged in a course of study and instruction at a college, university, or professional or technical school' and 'one who studies a subject systematically or in detail'.

43. Paragraphs 34 to 48 of Taxation Ruling TR 93/39 Income tax: friendly society education funds, discuss the meaning of the words 'scholarship, bursary, educational allowance or educational assistance' for the purposes of the former paragraph 23(z) of the *Income Tax Assessment Act 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...'.⁷

44. 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;⁷ and
- the education of the recipient is at least one purpose for which the scholarship is provided.⁸

⁷ *Re Leitch (deceased)* [1965] VR 204.

⁸ *Federal Commissioner of Taxation v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450.

45. To be awarded an INTRAIN Scholarship, students have to undertake a competitive selection process which involves them being assessed against a range of criteria such as their academic achievements and interpersonal skills. As such, it is accepted that selection for the INTRAIN Scholarship is merit based.

46. In *Chesterman v. Federal Commissioner of Taxation*⁹ Isaacs J said that for purposes to be educational they must provide for the giving or imparting of instruction.

47. The INTRAIN Scholarship is paid to a student enrolled in a course with a major focus on public health issues. It is accepted that the INTRAIN Scholarship has the requisite educational purpose.

48. Accordingly, it is accepted that payments made under the INTRAIN Scholarship are made by way of 'a scholarship, bursary, educational allowance or educational assistance'.

Do the exceptions in section 51-35 apply?

49. Section 51-35 excludes the following payments from exemption:

- payments by the Commonwealth for education or training: paragraphs 51-35(a), 51-35(b) and 51-35(f);
- payments made on the condition that the student will (or will if required) become an employee of the payer: paragraph 51-35(c);
- payments made on the condition that the student will (or will if required) enter into a contract with the payer that is wholly or principally for the labour of the student: paragraph 51-35(d); and
- payments made under a scholarship that is not provided principally for educational purposes: paragraph 51-35(e).

Are the payments Commonwealth education or training payments?

50. The payments made under the Scholarship are not of a kind covered by paragraphs 51-35(a), 51-35(b) or 51-35(f).

⁹ (1923) 32 CLR 362 (at 385-6).

Are the payments made on the condition that the student will (or will if required) become or continue to be an employee of the payer?

51. Paragraph 51-35(c) excludes payments from exemption if they represent:

a payment by an entity or authority on the condition that the student will (or will if required) become, or continue to be, an employee of the entity or authority.

52. The Federal Court has taken the view that the words 'upon condition that' do not require a contract between the parties to exist or any other form of legal relationship.¹⁰ It was held that the exemption did not apply where, as a matter of ordinary language, it could be said that the receipt of the scholarship amount was conditional on the recipient working with the payer if the payer so required.

53. The terms of the INTRAIN Scholarship put the student under no obligation (whether or not legally binding) to become an employee of DH in the future, or to do so if required.

54. The payments under the INTRAIN Scholarship are therefore not excluded from exemption under paragraph 51-35(c).

Are the payments made on the condition that the student will (or will if required) enter into, or continue to be a party to, a contract with the payer that is wholly or principally for the labour of the student?

55. Paragraph 51-35(d) excludes payments from exemption if they represent:

a payment by an entity or 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 entity or authority that is wholly or principally for the labour of the student.

56. Paragraph 51-35(d) imposes a similar requirement to that of paragraph 51-35(c) by excluding employment-like relationships, that is, contracts wholly or principally for labour.

57. It is recognised that work performed for an organisation can be part of an education program.¹¹

58. In circumstances where work is carried out solely or primarily for an educational purpose and its results are not calculated to benefit the organisation but are incidental products of the study program, there is no contract wholly or principally for the labour of the student.

59. The terms of the INTRAIN Scholarship put the student under no obligation (whether or not legally binding) to enter into a contract wholly or principally for the student's labour in the future, or to do so if required.

¹⁰ *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; (1989) 90 ALR 533; 89 ATC 5322; (1989) 20 ATR 1652.

¹¹ *Federal Commissioner of Taxation v. Hall* 75 ATC 4156 at 4164 and 4162.

60. The payments under the INTRAIN Scholarship are therefore not excluded from exemption under paragraph 51-35(d).

Are the scholarships provided principally for educational purposes?

61. The INTRAIN Scholarships are awarded to a student to enable them to complete a study program in public health.

62. It is accepted that in providing the INTRAIN Scholarships DH is doing so principally for educational purposes. The INTRAIN Scholarship payments are therefore not excluded from exemption by paragraph 51-35(e).

63. Accordingly, the fortnightly stipend payments made to a student are exempt under item 2.1A of the table in section 51-10.

Capital gains tax

64. A student's entitlement to receive fortnightly stipend payments is a CGT asset under subsection 108-5(1) that is acquired when the application for the INTRAIN Scholarship is approved.

65. CGT event C2 happens under section 104-25 when a student's entitlement to receive fortnightly stipend payments is satisfied. The time of the CGT event under subsection 104-25(2) is when the payment is made.

66. However, any capital gain made from the CGT event C2 is reduced under section 118-20. Subsection 118-20(1) reduces a capital gain by an amount that is included in exempt income. Fortnightly stipend payments are exempt income and therefore any capital gain is reduced to zero.

Doctoral payment

67. The payment of up to \$3,000 to Doctoral students to cover conference travel and registration, professional development and other costs associated with the study program is a reimbursement of the student's actual expenses and not an allowance. As explained by Taxation Ruling TR 92/15¹² which deals with the distinction between an allowance and a reimbursement for income tax and fringe benefits tax purposes:

A payment is a reimbursement when the recipient is compensated exactly (meaning precisely, as opposed to approximately), whether wholly or partly, for an expense already incurred although not necessarily disbursed. In general, the provider considers the expense to be its own and the recipient incurs the expenditure on behalf of the provider.

¹² Income tax and fringe benefits tax: the difference between an allowance and a reimbursement

68. It is considered that the payment of up to \$3,000 to Doctoral students is not assessable as ordinary income as it does not satisfy the criteria for ordinary income. The payment is a direct reimbursement of expenses incurred as part of the education course which are not the product of any employment or services rendered and not ordinary income in the hands of the student.

69. The payment of up to \$3,000 paid to Doctoral students is not provided to them as employees. Nor is it provided 'in respect of, or for or in relation directly or indirectly to' any services rendered by them, as there is no element of reward in the payment for any services they might provide.¹³ The payment is given solely to support the student's professional education and development in matters integral to the study program. Any amounts the student receives in reimbursement of costs incurred in attending conferences and training sessions are, therefore, not assessable income under section 15-2.

70. The payment of up to \$3,000 paid to Doctoral students is neither ordinary nor statutory income.

Capital gains tax

71. A Doctoral student's entitlement to receive reimbursement payments of up to \$3,000 is a CGT asset under subsection 108-5(1). The entitlement is acquired when the application for the INTRAIN Scholarship is approved.

72. CGT event C2 happens under section 104-25 when Doctoral student's entitlement to receive a reimbursement payment is satisfied. The time of the CGT event under subsection 104-25(2) is when the payment is made.

73. However, any capital gain or capital loss resulting from CGT event C2 is disregarded under paragraph 118-37(2)(a). This provision provides a CGT exemption for a capital gain or capital loss that results from the receipt of a payment as reimbursement under a scheme established by an Australian government agency under an enactment. The INTRAIN Scholarship is such a scheme.

¹³ *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274.

Appendix 2 – Detailed contents list

74. 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 92/15; TR 93/39; TR 2006/10

Subject references:

- ordinary income
- statutory income
- exempt income
- scholarships, fellowships & bursaries
- capital gains tax
- CGT Events C1-C3 – end of a CGT asset.

Legislative references:

- ITAA 1936 23(z)
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 6-20(1)
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1997 Div 51
- ITAA 1997 51-1
- ITAA 1997 51-10
- ITAA 1997 51-35
- ITAA 1997 51-35(a)
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- ITAA 1997 51-35(e)
- ITAA 1997 51-35(f)
- ITAA 1997 104-25
- ITAA 1997 104-25(2)
- ITAA 1997 108-5(1)
- ITAA 1997 118-20
- ITAA 1997 118-20(1)
- ITAA 1997 118-37
- ITAA 1997 118-37(2)
- ITAA 1997 118-37(2)(a)
- TAA 1953
- Copyright Act 1968

Case references:

- *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362

- *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375; 77 ATC 4255; (1977) 7 ATR 519
- *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5 AITR 443
- *Federal Commissioner of Taxation v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450
- *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; (1989) 90 ALR 533; 89 ATC 5322; (1989) 20 ATR 1652
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- *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 AITR 248
- *Re Leitch (deceased)* [1965] VR 204
- *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367
- *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274
- *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570

Other references:

- *The Macquarie Dictionary*, 1991, 2nd revised Edition

ATO references

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