



Class Ruling

CSIRO – studentship or internship stipends

❶ Relying on this Ruling

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the tax consequences of receiving stipend payments from the Commonwealth Scientific and Industrial Research Organisation (CSIRO) under the following awards:
 - CSIRO Sponsored Postgraduate Studentships
 - CSIRO-University Co-funded Postgraduate Studentships
 - Industry PhD Studentships (iPhD), and
 - CSIRO Postgraduate Internships.
2. Full details of this scheme are set out in paragraphs 8 to 87 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997* (ITAA 1997) unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to full-time university students in receipt of a studentship or internship stipend as described in this Ruling.

When this Ruling applies

5. This Ruling applies from 1 July 2020 to 30 June 2025.

Ruling

6. The payments received by students from the CSIRO under the studentship and internship programs as described within this Ruling are considered ordinary income under subsection 6-5(1).
7. However, the payments received from the CSIRO under these programs will be exempt income under table item 2.1A of section 51-10 where received by full-time university students.

Scheme

8. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.
9. Section 9 of the *Science and Industry Research Act 1949* (SIR Act) lists the statutory functions of the CSIRO.
10. Under paragraphs 9(1)(d) and (e) of the SIR Act, these statutory functions include:
- to train and assist in the training of research workers in the field of science and to cooperate with tertiary education institutions in relation to education in that field, and
 - to establish and award fellowships and studentships for research, and to make grants in aid of research.
11. Relevantly, the CSIRO provides the following under its statutory functions:
- studentships that support postgraduate students to undertake impactful research in areas aligned with CSIRO strategy
 - cooperation with tertiary education institutions to assist in the training of researchers in science and technology
 - opportunities for students to develop skills and experience in collaborative research teams so they can work effectively within national, international and multi-stakeholder environments in the broader innovation system, and
 - building research capability for Australia.
12. More specifically, the CSIRO offers postgraduate studentships and internships to Doctor of Philosophy (PhD), Masters, Graduate Certificate and Graduate Diploma students to undertake research in fields capable of being supported by the CSIRO.
13. The CSIRO currently funds four types of award:
- CSIRO Sponsored Postgraduate Studentships
 - CSIRO-University Co-funded Postgraduate Studentships
 - iPhD, and
 - CSIRO Postgraduate Internships.
14. The CSIRO studentships and internships are intended to provide a meaningful learning and development opportunity for students but are not to be used to conduct the ordinary operations of the CSIRO or fill vacancies.

15. Students and interns must have a university supervisor and a CSIRO sponsor. The CSIRO will, in conjunction with the university supervisor, have a responsibility for:

- the oversight of, and participation in decisions about, the student's research program where deemed appropriate
- periodic advice and support for the student's studies
- matters concerning the student's wellbeing, and
- coordination between the student, the university and the CSIRO.

16. Industry PhD studentships also have an industry partner supervisor.

17. Students must apply to receive the studentships and internships funded by the CSIRO.

18. The CSIRO Sponsored Postgraduate Studentships, CSIRO-University Co-funded Postgraduate Studentships, and iPhDs are publicly advertised. Top-up scholarships and CSIRO Postgraduate Internships do not require advertisement, but students must have undergone some form of merit selection through their university.

19. Recipients must be enrolled as students of their university and undertake research at or in association with the CSIRO.

20. Students participating in a studentship or internship program may be covered under the CSIRO workers compensation scheme for services performed during their program with the CSIRO.

21. To receive payments under a studentship or internship program, a student must enter a student agreement with the CSIRO and the university (Student Agreement). The Student Agreement specifies the terms of engagement and states it does not create the relationship of employee and employer between any of the parties. It addresses intellectual property, publications and confidentiality, dispute resolution, and extension and termination of the studentship and internship. The CSIRO has three standard Student Agreements. The terms of the Student Agreement are not negotiable.

22. In addition to the Student Agreement, a research project may also have a Collaboration Agreement which sets out terms of the project, including the option for joint ownership of jointly developed intellectual property (Project IP). Ownership can vary for each project depending on the nature of the project and nominated owners. For instance, the Collaboration Agreement for an iPhD project will generally give ownership of all Project IP to the industry partner.

23. Where there is no Collaboration Agreement for a project, either the CSIRO or the university will own Project IP as set out in the relevant Student Agreement.

24. Common paragraphs within a Student Agreement include:

- The CSIRO will pay a stipend and give the student access to premises, facilities and resources to undertake research on the project. The Student must remain enrolled in the degree at the university for the term of the Agreement and comply with university rules.
- Students must comply with the CSIRO's code of conduct.
- Students will work on the project under the supervision of a university supervisor and a CSIRO appointed supervisor, and must comply with reasonable directions given by the supervisors or the CSIRO persons regarding the project. At the end of the project or when requested by the CSIRO or the university, the student must provide a report outlining the results of the project and any other work they did in relation to the project. At

the reasonable request of the university supervisor, the CSIRO will provide an evaluation report on the student to the university for the purpose of assessing the student's academic progress.

- Project IP can be owned by the CSIRO, the university, the student or other partners to the project (or a combination of them) as set out in the Collaboration Agreement for the project (if any). The owner of the Project IP will give other parties to the Student Agreement a royalty free licence to use the Project IP in limited circumstances. The student owns the copyright in their thesis and gives other parties to the Student Agreement a royalty free licence to use the thesis in limited circumstances.
- The parties must not disclose confidential information about any party collected for the project.
- The student can present their thesis for examination but must protect confidential information and Project IP. The CSIRO can embargo public access to the thesis for up to 12 months. The thesis must be reviewed by the supervisors prior to being given to an examiner, external referee or published.
- The CSIRO can restrict publication of the research to protect confidential information and CSIRO intellectual property.
- The student's thesis and any publications and presentations must acknowledge any contributions made by the supervisors, the CSIRO or university for work done on the thesis.
- The term of the Student Agreement can be extended by agreement between the CSIRO, the University and the student.
- The CSIRO can terminate the Student Agreement if the student breaches the terms of the agreement or the student is no longer enrolled in the degree at the university.

25. Ancillary outcomes for the CSIRO or other partners fostering a student project may include Project IP and/or other information documented in a thesis or student paper of confidential importance.

CSIRO Sponsored Postgraduate Studentship

26. A CSIRO Sponsored Postgraduate Studentship is offered as a primary scholarship and/or as a top-up scholarship and ensures project operating expenses can be reimbursed. It is offered to students working on a project relevant to the strategic direction and focus of the CSIRO, where the CSIRO has a role in defining the scope of the project.

27. At the date of publication of this Ruling, the CSIRO has funded several postgraduate studentships under the CSIRO Sponsored Postgraduate Studentships program, including the Data61 Scholarships and ResearchPlus Postgraduate top-up scholarships.

28. The primary scholarship stipend is set at the base rate of the Research Training Program (RTP) scheme (\$28,092 for 2020).

29. The top-up scholarship stipend is \$10,000 per annum.

30. The CSIRO will also provide funds for learning and development and reasonable operating expenses incurred by students in the course of their research project, and may reimburse travel costs and relocation expenses. Use of these funds is at the discretion of the CSIRO and the university supervisor.

31. To be eligible for a CSIRO Sponsored Postgraduate Studentship a student must be:
 - an Australian citizen, or have permanent residency status, or hold an appropriate visa to study in Australia, and
 - enrolled at an Australian university.
32. In addition:
 - PhD students must have completed, or be about to complete, a university degree to first or upper second-class honours standard (based in part on the student's performance in a research project), and
 - Masters students must demonstrate strong academic performance in a bachelor's degree.
33. Where there is a national skill shortage as specified by the Australian Government (Government), CSIRO Sponsored Postgraduate Studentships may be awarded to overseas students enrolled in a full-time course at an Australian university.
34. CSIRO Sponsored Postgraduate Studentships are awarded based on merit.
35. The student's research must be co-supervised by a university supervisor and CSIRO supervisor. The CSIRO supervisor will have responsibility for the oversight of the research program and support the student's studies.
36. The student must submit progress reports to the CSIRO supervisor as agreed with the university to monitor academic/project progress but not assure ancillary outputs which may benefit the CSIRO.
37. Students who are in receipt of any other primary scholarship which supports living costs are not eligible for a primary scholarship under the CSIRO Sponsored Postgraduate Studentship. Top-up scholarships are made available to students who are in receipt of a CSIRO primary scholarship, government-funded scholarship, university funded scholarship or other third party funded scholarship. Under the CSIRO Sponsored Postgraduate Studentship, top-up scholarships are not available to students who already hold another top-up scholarship.
38. Primary scholarships under the CSIRO Sponsored Postgraduate Studentship are offered for a period up to four years for PhD students and up to two years for Masters students. A top-up scholarship will be for the period of the student's primary scholarship.
39. A CSIRO Sponsored Postgraduate Studentship can be paid to a full-time student (full-time study load) or part-time student (part-time study load). Some studentships require the student to have a full-time study-load.
40. The CSIRO Sponsored Postgraduate Studentship scholarship stipend is paid fortnightly in arrears from commencement of the scholarship until cessation of studies or the scholarship end date. The scholarships will be paid through CSIRO payroll unless an agreement is in place for it to be paid by the university, in which case it will be paid through the university's payment processes.

CSIRO-University Co-funded Studentship

41. The CSIRO-University Co-funded Studentship is offered as a primary scholarship and/or a top up scholarship. It is offered to students working on a co-funded collaborative CSIRO-University project where a formal arrangement is in place between the CSIRO and the University. A project may be undertaken at CSIRO or university facilities depending on the project, but most will be undertaken in CSIRO facilities.

42. The primary scholarship stipend is set at the base rate of the RTP scheme (\$28,092 for 2020).
43. The top-up scholarship stipend is \$10,000 per annum.
44. The CSIRO and the university will also provide funds for learning and development and reasonable operating expenses. Use of these funds is at the discretion of the CSIRO.
45. To be eligible for a CSIRO-University Co-funded Studentship a student must be:
 - an Australian citizen, or have permanent residency status, or hold an appropriate visa to study in Australia, and
 - enrolled at an Australian university.
46. In addition:
 - PhD students must have completed, or be about to complete, a university degree to first or upper second-class honours standard (based in part on the student's performance in a research project), and
 - Masters students must demonstrate strong academic performance in a bachelor's degree.
47. Where there is a national skill shortage as specified by the Government, CSIRO-University Co-funded Studentships may be awarded to overseas students enrolled in a full-time course at an Australian university.
48. CSIRO-University Co-funded Studentships are awarded based on merit.
49. The student's research must be co-supervised by a university supervisor and CSIRO supervisor. The CSIRO supervisor will have responsibility for the oversight of the research program, and advice and support for the student's studies.
50. The student must submit progress reports to the CSIRO supervisor as agreed with the university to monitor academic/project progress but not assure ancillary outputs which may benefit the CSIRO.
51. Top-up scholarships are made available to students who are in receipt of a CSIRO primary scholarship, government-funded scholarship, university-funded scholarship or other third-party funded scholarship.
52. Primary scholarships are offered for a period up to four years for PhD students and up to two years for Masters students. A top-up scholarship will be for the period of the student's primary scholarship.
53. A CSIRO-University Co-funded Studentship can be paid to a full-time student (full-time study load) or part-time student (part-time study load).
54. The scholarship stipend is paid fortnightly in arrears from commencement of the scholarship until cessation of studies or the scholarship end date. The scholarships will be paid either through CSIRO payroll or through the university's payment processes under an agreement between the CSIRO and the university. Where the CSIRO accepts any monies paid to it on trust, the CSIRO will use the funds in accordance with the agreed terms and pay the student's stipend and allowances.

Industry PhD Studentship

55. The iPhD involves collaborative research between the CSIRO, a university and an industry partner to deliver an industry-focused applied research training program. The program requires that all three partners (industry, university and the CSIRO) are involved

in all aspects of the project from definition of the problem through to candidate selection, supervision and completion.

56. The iPhD scholarship totals \$41,092 per annum (for 2020), which is indexed annually. The scholarship is a structured program that must be commenced in the year of the offer.

57. The iPhD scholarship is comprised of the following amounts:

- \$28,092 per annum (indexed) awarded and paid by the university as an RTP scholarship (or equivalent), and
- \$13,000 per annum (not indexed) paid by the CSIRO or the industry partner as a top-up scholarship.

58. The iPhD scholarship will generally be paid to the student through the university, unless an agreement is in place for the scholarship to be paid through the CSIRO. Where it is paid through the university, the CSIRO will pay the top-up scholarship to the university for distribution to the student.

59. The iPhD industry partner will also provide funds for reasonable operating expenses and may provide funds for learning and development. The CSIRO and the university may also provide funds for operating expenses and learning and development. The CSIRO or the university will manage the funds on behalf of the student. The use of funds for operating expenses is at the discretion of the CSIRO and the university supervisor.

60. The iPhD is a four-year program.

61. To be eligible for the iPhD Studentship, the student must be:

- an Australian citizen or permanent resident, or New Zealand citizen, and
- in receipt of an RTP stipend, or an equivalent award or scholarship which may be awarded by the industry partner.

62. Students who are in receipt of any other top-up scholarship or award, or have already commenced PhD studies, may not be eligible.

63. The iPhD studentships are only offered through Australian universities.

64. Students are assessed by the:

- university in terms of university requirements, and
- CSIRO, the university and the industry partner in terms of academic skills and interest in undertaking an applied PhD.

65. The Supervisory Team is comprised of a university supervisor, CSIRO supervisor and industry supervisor (Supervisory Team). All supervisors will be actively involved and provide expertise, equipment and resources to the project and student.

66. The Supervisory Team must be involved in identifying and defining the research project. The research project must have demonstrable benefits to the industry partner's business, and have demonstrated alignment between industry, university and the CSIRO strategy. The research project must address an industry problem. The CSIRO and the university will select the research project.

67. The Supervisory Team is responsible for nominating students for the project and the program. Students nominated by the Supervisory Team will be invited to submit an application to the university which may be approved or declined.

68. Students will be assessed on academic excellence, experience relevant to the field of research, including any research experience, suitability for the project and industry experience.

69. The iPhD Studentship includes a mandatory development program which includes a three to six months industry internship component with the industry partner. Students will continue to receive the iPhD Studentship stipend for the period of the internship component.

70. The internship is a mandatory component of the scholarship program and is part of the professional development of the program. It is designed to provide practical learning activities for the candidate separate from the research project and should provide exposure to the broader work environment of the industry partner including participating in workplace meetings and meetings with clients.

71. The industry partner is expected to provide options for the internship but the final arrangement for the internship must be agreed between the Supervisory Team and the student. This will be set out in the Internship Plan.

72. The internship can be completed as a block or spread throughout the program (it must occur within the four-year candidature) and should be conducted predominantly at the industry partner's location. An Internship Plan must be provided to the university and the CSIRO within 12 months of the placement. If the arrangement changes, an updated plan must be provided.

73. At the completion of the internship the candidate must complete a statement about the internship experience and what they learnt. This may include a presentation or report. The industry partner is also requested to complete a short statement outlining the impact and outcomes of the internship.

74. The internship cannot be used as additional time to work on the candidate's thesis. Research from the internship can be included in the candidate's thesis.

CSIRO Postgraduate Internship

75. CSIRO Postgraduate Internships are offered to PhD or Masters students to gain work experience as part of a course requirement for their university degree. The student works on a CSIRO-designed project under the supervision of the CSIRO.

76. A student undertaking the CSIRO Postgraduate Internship must have a university and a CSIRO supervisor.

77. The scope of the CSIRO's control is to define the area of research. The student is not subject to the orders or direction of the CSIRO, and the CSIRO cannot exercise control over the student to direct that services or labour be provided. Furthermore, the stipend is not paid on the condition that the student render services to the CSIRO.

78. Students completing research for a thesis component of their studies are not engaged as a CSIRO Postgraduate Intern.

79. A purpose of the internship is to build research capability for Australia by providing students with opportunities to participate in collaborative research and undertake impactful research without a requirement to deliver productive outputs for the CSIRO.

80. To be eligible for the CSIRO Postgraduate Internship the student must be:

- enrolled in a PhD or Masters' degree
- required to undertake a work experience component as part of their degree, whether compulsory or elective, and
- have the approval of their university to undertake the internship.

81. CSIRO postgraduate internships are offered for a period of up to one year.

82. Students may undertake the internship without receiving a stipend. To receive the CSIRO Postgraduate Internship stipend, a student must not be in receipt of a primary scholarship stipend.

83. A stipend will be paid where the university requires the student's primary scholarship to be suspended. Where this happens, the stipend will be equivalent to the pro rata base RTP rate (\$28,092 for 2020), plus operating expenses, but may be higher.

84. Students not receiving a stipend may be paid a living allowance if the student is required to transfer from their place of living to another locality to undertake the internship and funding is not provided by the university. Where this happens, the stipend will be equivalent to the pro rata base RTP rate. If the student receives a partial living allowance from another source, any CSIRO contribution will be adjusted so the full allowance is equivalent to the pro rata base RTP rate.

85. The stipend will be paid through the CSIRO payroll fortnightly in arrears from commencement of the internship at the CSIRO until cessation of the internship or the internship end date.

86. The CSIRO may also provide funds for reasonable costs incurred by students in the course of their work experience at the CSIRO and may also reimburse travel costs and relocation expenses. Use of these funds is at the discretion of the CSIRO and the university supervisor.

87. This scheme has been determined from information contained in the following documents and materials:

- Class ruling application from the CSIRO dated 17 August 2020
- Postgraduate Studentships Procedure
- Student Agreement – Postgraduate Student (CSIRO owns IP)
- Student Agreement – Postgraduate Student (Uni owns IP)
- Data61 Student Scholarship Agreement
- Collaborative Project Agreement
- Academic Collaboration Agreement with University
- Data61-University Collaboration Agreement Accession Deed (Round 3)
- Industry PhD (iPhD) Collaboration Agreement
- 2017 CSIRO Data61 Scholarship Program Scholarship Award Guidelines
- ResearchPlus (R+) Funding Guidelines
- Example of iPhD Scholarship Program Guidelines
- Example of iPhD Scholarship Program Scholarship Terms and Conditions, and
- Example of Industry Placement Plan.

Appendix – Explanation

❶ *This Explanation 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.*

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Ordinary income

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

89. The legislation does not provide specific guidance on the meaning of income according to ordinary concepts, however there is a substantial body of case law that identifies likely characteristics.

90. In *GP International Pipecoaters Pty Ltd v Commissioner of Taxation(Cth)*¹, the 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.

91. 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] HCA 25.

² *Commissioner of Taxation of the Commonwealth of Australia v Rowe, Anthony John Poulston* [1995] FCA 834.

³ *Commissioner of Taxation (Cth) v Dixon* [1952] HCA 65.

92. 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

93. The stipend payments contemplated by this Ruling are ordinary income, being periodical receipts that are expected and relied upon by the student.

Exempt income

94. 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.

95. 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.

96. Table item 2.1A of section 51-10 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, and
- not subject to the exceptions as outlined in section 51-35.

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

Full-time students at a school, college or university

98. The studentships and internships are awarded to PhD, Masters, Graduate Certificate and Graduate Diploma students.

99. They are available to part-time and full-time students.

100. In all cases, recipients must remain enrolled as students of their university while undertaking the studentship or internship and comply with university rules at all times.

101. Students in receipt of a studentship or internship may undertake work experience, research, training or study at the university or an external site, including the CSIRO or another industry partner.

102. The university provides direction and supervision for students and will continue to impart and oversee educational outcomes when third-party institution companion oversight is involved.

103. Research projects undertaken at CSIRO or industry partner premises are completed with university co-supervision and oversight and accepted as being at a school, college or university in the statutory context of table item 2.1A of section 51-10.

⁴ *Scott v Federal Commissioner of Taxation* [1966] HCA 48; *Hayes v Commissioner of Taxation (Cth)* [1956] HCA 21; *Federal Coke Company Pty Limited v The Commissioner of Taxation of the Commonwealth of Australia* [1977] FCA 29.

⁵ *Squatting Investment Co Ltd v Commissioner of Taxation* [1953] HCA 13.

⁶ *Scott v Federal Commissioner of Taxation* [1966] HCA 48.

104. Where a stipend is received by a full-time student, it is accepted that these students satisfy the condition of being a full-time student at a school, college or university. Where a stipend is received by a part-time student, the amount will not be exempt income under Division 51.

Scholarship, bursary, educational allowance or educational assistance

105. The words 'scholarship', 'bursary', 'educational allowance' or 'educational assistance' are not defined in the ITAA 1997. *The Macquarie Dictionary* online⁷, defines:

- 'scholarship' as 'the sum of money or other aid granted to a scholar'
- 'scholar' as 'a student who, because of merit, etc., is granted money or other aid to pursue his or her studies', and
- 'student' as 'someone who is engaged in a course of study and instruction, as at a college, university, or secondary school' and 'someone who studies a subject systematically or in detail.'

106. 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 ...'.

107. 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 criterion⁸, and
- education of the recipient is at least one purpose for which the scholarship is provided.⁹

108. To receive a CSIRO studentship or internship, students must undertake a merit based selection process which involves an assessment of their skills against criteria including academic achievements and interpersonal skills. As such, it is accepted that selection for the studentships and internships are merit based.

109. In *Chesterman v Federal Commissioner of Taxation*¹⁰, Isaacs J said that for purposes to be educational they must provide for the giving or imparting of instruction.

110. To receive a CSIRO stipend a student must meet the eligibility criteria, including university enrolment and compliance with university rules. The studentships are awarded to postgraduate university students who undertake research as part of their course of study for research training and development purposes. It is accepted that the studentships and internships have the requisite educational purposes.

⁷ MacMillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 14 May 2021.

⁸ *Re Leitch, deceased* [1965] VR 204.

⁹ *Federal Commissioner of Taxation v Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450.

¹⁰ [1923] HCA 24.

111. Accordingly, it is accepted the payments are by way of 'a scholarship, bursary, educational allowance or educational assistance'.

Section 51-35 exceptions

112. Section 51-35 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 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)).

Commonwealth payment for education or training

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

Payment on condition that the student enters into employment with, or a contract for labour with, the payer

114. Paragraphs 51-35(c) and (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) become, or continue to be, an employee of the entity or authority, or
- 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.

115. In *Commissioner of Taxation of the Commonwealth of Australia v Ranson, E.L.*¹¹, the Federal Court took 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. 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.

116. To receive a studentship or internship the student is required to enter a Student Agreement with the CSIRO and university. The Student Agreement clearly sets out that the student will work with the CSIRO and university on a research project relevant to their course of study at the university but is not otherwise required to perform work for the CSIRO. In all cases, the students are not employees of the CSIRO.

117. While the student can be directed by the CSIRO with regards to the research project and may be covered by the CSIRO workers compensation scheme for work performed on the research project, this is not considered sufficient to make the student an employee of that organisation.

¹¹ [1989] FCA 741.

118. Neither are the Student Agreements considered to amount to a contract wholly or principally for the labour of the student.

119. As such, the payments are not excluded under paragraphs 51-35(c) or (d).

Payment not provided principally for educational purposes

120. The word 'principally' is not defined and takes on its commonly understood meaning of 'chiefly' or 'mainly'.¹²

121. The granting of studentships and internships are done in accordance with particular statutory functions of the CSIRO under section 9 of the SIR Act. Relevantly, the CSIRO delivers in the following ways, consistent with its statutory functions:

- providing studentships that support postgraduate students to undertake impactful research in areas aligned with CSIRO strategy
- cooperating with tertiary education institutions to assist in the training of researchers in science and technology
- providing opportunities for students to develop skills and experience in collaborative research teams so they can work effectively within national, international and multi-stakeholder environments in the broader innovation system, and
- building research capability for Australia.

122. In all cases, the studentships and internships provide a meaningful learning and development opportunity for the students and are not to be used as a means to conduct the ordinary operations of the CSIRO or to fill vacancies caused by absences of staff members.

123. The studentships and internships are for an educational purpose. This includes periods of work experience, and the CSIRO Postgraduate Internship. The purpose for offering the scholarships is the development of research skills, which is an educational purpose.

124. As such, the payments are not excluded under paragraph 51-35(e).

¹² Macmillan Publishers Australia, *The Macquarie Dictionary* online, www.macquariedictionary.com.au, accessed 14 May 2021.

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