

TAXATION RULING NO. IT 2581

INCOME TAX : THE RENDERING OF SERVICES BY A SCHOLARSHIP  
HOLDER

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1012126	EXEMPTION SCHOLARSHIPS RENDER SERVICES	23(z)

PREAMBLE The purpose of this Ruling is to clarify the operation of paragraph 23(z) of the Income Tax Assessment Act 1936 (the Act) particularly as it relates to scholarships and fellowships awarded by the National Health and Medical Research Council (NHMRC).

2. Paragraph 23(z) of the Act exempts from income tax income derived by way of a scholarship, bursary or other educational allowance by a student receiving full-time education but not where the scholarship etc. is conditional on the student rendering services to the payer. In Case V97 88 ATC 637; AAT Case 4459 (1988) 19 ATR 3625, the Administrative Appeals Tribunal had to consider whether a fellowship paid by the NHMRC was exempt from tax under paragraph 23(z). It decided that the fellowship was not exempt because the recipient was required to render services to the NHMRC.

3. NHMRC fellowships are awarded upon the following conditions:
- (a) the money must be used solely for the purposes of the award;
  - (b) the recipient must devote all of his or her work energies to the research for which the fellowship was granted. The recipient may not, for example, take part-time employment;
  - (c) the recipient has to submit an annual report;
  - (d) within 3 months of completion of the fellowship, the recipient is required to submit a full report on all work undertaken during the period of the fellowship, including details of any new knowledge gained in the field of study. The NHMRC may use and publish the contents of reports prepared by the recipient so long as the author was acknowledged; and
  - (e) any publication by the recipient of material arising

from the fellowship must acknowledge the financial assistance of NHMRC through the fellowship program.

4. In Case V97; AAT Case 4459 (supra), the Tribunal decided that the condition requiring the fellow to submit an annual report of work done was a requirement to render services to the NHMRC. The fellowship was therefore not exempt. The Tribunal stated that "the expression 'render services' was capable of covering a very wide range of activities ...". It was of the view that the phrase "render services" in paragraph 23(z) was not limited to services of the kind referred to by McTiernan J. in *Revesby Credit Union Co-operative Limited v FCT* (1965) 112 CLR 564 at 577-8 when his Honour was considering the expression "the rendering of services" in a different legislative context.

5. In contrast to the conditions attached to NHMRC fellowships, recipients of NHMRC scholarships are generally only required to provide an annual progress report which the NHMRC uses solely to determine whether the research is progressing in such a way as to justify the granting of the scholarship for a further year.

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6. Scholarship income will not be exempt under paragraph 23(z) of the Act where as a condition of the scholarship the recipient is required, either in the present or future, to perform work for the provider of the scholarship. (see *FCT v Ranson*, 89 ATC 5322 at 5329; *FCT v Hall* 75 ATC 4156 at 4165; 5 ATR 450 at 460). Support for the view that the rendering of services requires doing work for the scholarship provider can be found in the Explanatory Notes to the Income Tax and Social Services Contribution Act 1951 which introduced paragraph 23(z) into the Act. The Explanatory Note to paragraph 23(z) states, in part, that:

"The exemption will not extend, however, to payments, whether termed "scholarships" or otherwise, which are in effect payments in the nature of remuneration for present or future services. Allowances paid to research workers, for example, are indistinguishable in nature from salaries and will continue to be subject to tax and contribution."

7. Notwithstanding the decision in Case V97; AAT Case 4459, it is considered that the mere lodging of an annual progress report does not constitute a requirement to perform work for the scholarship provider.

8. The conditions attached to the awarding of NHMRC fellowships are not restricted merely to the provision of an annual progress report. They amount to a requirement on the recipient of the fellowship to render services to the NHMRC. Accordingly, NHMRC fellowships are not exempt from tax under paragraph 23(z).

9. On the other hand where a NHMRC scholarship holder is only required to provide an annual progress report, the scholarship income is exempt from tax.

COMMISSIONER OF TAXATION

12 April 1990