



CR 2002/5 - Income tax: Exempt Income - ACCV Post-Graduate Research Scholarships

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 December 2001*



Class Ruling

Income tax: Exempt Income – ACCV Post-Graduate Research 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 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, 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 whom this Ruling applies is post-graduate students who obtain Post-Graduate Research Scholarships with the Anti-Cancer Council of Victoria (ACCV).

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 described below at paragraphs 9 to 17 is carried out in accordance with the details of the arrangement provided in this Ruling.

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

- 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- b) this Ruling may be withdrawn or modified.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 December 2001. 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*; or
- 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:

- Correspondence from the ACCV dated 20 September 2001; and

- Application for Class Ruling dated 22 October 2001.

10. The ACCV provides Post-Graduate Research Scholarships with the purpose of providing graduates in medicine or science with an opportunity to pursue full-time PhD or MD cancer research studies at a Victorian University.

11. Post-graduate students who have secured arrangements to undertake a full-time PhD (or equivalent) in research at a Victorian University are eligible to apply. The research must relate to cancer aetiology, prevention, diagnosis or treatment, but preference is given to candidates whose research focuses on the biological or clinical aspects of cancer.

12. The scholarship is currently \$18,000 per annum for Science graduates or \$24,000 per annum for Medicine graduates. Payments are made quarterly in advance to the host institution which then makes payments to the candidate according to its internal arrangements.

13. Candidates also currently receive \$400 to cover amenities and service fees, and can claim reimbursement of the cost of two copies of the thesis (up to \$200 plus GST), if the thesis is submitted within 12 months of the completion of the scholarship.

14. The tenure of the scholarship will usually be 3 years. Renewal in each year is dependent on satisfactory progress.

15. Selection for the scholarships involves an assessment of applications against the quality of the applicants academic record, the significance of the research proposal, and comments of referees including the intended supervisor.

16. The scholarship holder is subject to a number of obligations, including the requirement to submit an annual report, and to acknowledge the support of the ACCV in publications or announcements pertaining to the research.

17. The scholarship holder can receive funding from other sources subject to the following provisos:

- The other funding must not be contingent on any naming rights pertaining to the candidate or the research;
- Funding will not be granted to any researcher who is receiving or who is an applicant for funding from the Tobacco Institute of Australia, or the tobacco industry generally;
- Funding will be withdrawn without notice from any research for which an application is made to, or funding received from, the Tobacco Institute of Australia, or the

tobacco industry generally, during the currency of the scholarship.

Ruling

18. The payments made under the Post-Graduate Research Scholarships are ordinary income under subsection 6-5(1) of the ITAA 1997.

19. However, the payments described in the preceding paragraph when paid to full-time students at a school, college or university are exempt from income tax by the operation of sections 51-1 and 51-10 of the ITAA 1997.

Explanations

Ordinary income

20. 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).

21. Payments made under the Post-Graduate Research Scholarships are treated as ordinary income due to the periodical nature of the payments (*FC of T v. Ranson* (1989) 86 ALR 267; (1989) 89 ATC 4353; (1989) 20 ATR 488).

Exempt income

22. Section 51-1 of the ITAA 1997 exempts from income tax ordinary income and statutory income covered by tables in sections 51-5 to 51-30.

23. Item 2.1A of the table in section 51-10 of the ITAA 1997 provides an income tax exemption in relation to payments:

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

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

24. As stated in the 'Advice to Applicants' document, the scholarships are only provided to full-time postgraduate students enrolled at a Victorian University.

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

25. The words 'scholarship, bursary, educational allowance or educational assistance' are not defined in Division 51 of 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'.

26. 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* ('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'.

27. In interpreting the meaning of the words 'scholarship, bursary, educational allowance or educational assistance', courts have determined that 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) 75 ATC 4156).

Is selection based on merit or some other rational criterion?

28. The selection process for the scholarships involves an assessment of applications against the following criteria:

- the quality of the applicants academic record;
- the significance of the research proposal; and
- comments of referees including the intended supervisor.

29. It is accepted that applicants for the scholarships are subject to a competitive process and that the scholarships are granted on merit.

Is education of the recipient at least one purpose for which the scholarship is provided?

30. The ACCV provides Post-Graduate Research Scholarships with the purpose of providing graduates in medicine or science with an opportunity to pursue full-time PhD or MD cancer research studies at a Victorian University.

31. The scholarships are restricted to post-graduate students who have secured arrangements to undertake a full-time PhD (or equivalent) in research at a Victorian University.

32. There is an educational purpose behind the provision of the scholarships.

Do the exceptions in section 51-35 apply?

33. 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);
- 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); or
- payments made under a scholarship that is not provided principally for educational purposes: paragraph 51-35(e);

Is the payment a Commonwealth education or training payment?

34. Notwithstanding any Commonwealth funding the ACCV or a university in Victoria may receive, the scholarship payments are not education or training payments made by the Commonwealth. The scholarship payments are not education entry payments under Part 2.13A of the *Social Security Act 1991*.

Is the payment made on the condition that the student enter into employment or a contract for labour with the payer?

35. Subsections 51-35(c) and (d) of the ITAA 1997 specifically state that payments are not exempt from income tax if they represent:

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

- b) a payment by a person or any 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.

36. These sections contain narrow and specific exclusions which replaced the previous broader exclusion of 'render services' in section 23(z)(i) of the ITAA 1936.

37. There are some specific conditions which the students must agree to on accepting a post-graduate scholarship offered by the ACCV. However, under the terms of this arrangement, the ACCV is not conducting the research, and the recipients of the scholarships are not employees of the ACCV. The studentship holders also have no right or expectation of future employment with the ACCV. Rather, the ACCV is stimulating cancer research by the provision of educational scholarships to full-time post-graduate students enrolled in courses related to cancer research.

38. In *Case V97*; 88 ATC 637; AAT Case 4459; (1988) 19 ATR 3625, recipients of fellowships from the National Health and Medical Research Council (NHMRC) were required to submit an annual report, and the NHMRC were entitled to use information from those reports in its publications and reports. However, under the terms of this arrangement, the primary purpose of the annual reports submitted by the scholarship holders is to enable the ACCV to evaluate whether the provision of scholarships is an effective means to encourage and support post-graduate students who may choose to enter the career of cancer researcher.

39. Paragraphs 4 to 9 of Taxation Ruling IT 2581 discuss the distinction between 'annual' reports provided by NHMRC fellowship holders, and 'progress' reports submitted by NHMRC scholarship holders. Specifically, paragraph 7 of IT 2581 states that the lodging of a 'progress report does not constitute a requirement to perform work for the scholarship provider'.

40. The reports provided by scholarship holders under the terms of this arrangement are considered to be of a similar nature to a 'progress' report and are accepted as not being the performance of work for the ACCV.

Is the amount provided principally for educational purposes?

41. The scholarships are only provided to post-graduate students who have secured arrangements to undertake a full-time PhD (or equivalent) in research at a Victorian University.

42. The research activities performed during the scholarship placements are formally assessed as part of the students ongoing course of post-graduate study.

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

44. None of the exceptions above apply to the scholarship payments made under the terms of this arrangement.

Cross references of provisions

45. A reference in this ruling to sections 6-5 and section 8-1 of the 1997 Act expresses the same ideas as subsection 25(1) and subsection 51(1) of the ITAA 1936 respectively. A reference to item 2.1A of section 51-10 of the 1997 Act expresses the same ideas as subsection 23(z) of the ITAA 1936.

Detailed contents list

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Commissioner of Taxation

 27 February 2002

Previous draft:

Not previously issued in draft form

– ITAA 1997 51-5

– ITAA 1997 51-10

– ITAA 1997 51-30

Related Rulings/Determinations:

TR 92/1; TR 93/39; TR 97/16;

IT 2581; CR 2001/1

– ITAA 1997 51-35

– ITAA 1997 51-35(a)

– ITAA 1997 51-35(b)

– ITAA 1997 51-35(c)

Subject references:

– Exempt income

– Scholarships

– Post-Graduate Research Scholarships

– ITAA 1997 51-35(d)

– ITAA 1997 51-35(e)

– ITAA 1997 51-35(f)

– SSA 1991 2.13A

*Case references:**Legislative references:*

– TAA 1953 Part IVAAA

– ITAA 1936 23(z)

– ITAA 1936 23(z)(i)

– ITAA 1936 51(1)

– ITAA 1997 6-5

– ITAA 1997 6-5(1)

– ITAA 1997 8-1

– ITAA 1997 25(1)

– ITAA 1997 Div 51

– ITAA 1997 51-1

– FC of T v. Hall (1975) 6 ALR 457; (1975) 75 ATC 4156; (1975) 5 ATR 450

– FC of T v. Ranson (1989) 86 ALR 267; 89 ATC 4353; (1989) 20 ATR 488

– Re Leitch, deceased, 1965 VR 204

– Case V97; 88 ATC 637; AAT Case 4459; (1988) 19 ATR 3625

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