


CR 2002/56 - Income tax: RMIT University: fees paid in respect of employees for professional appointments

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Class Ruling

Income Tax: RMIT University: fees paid in respect of employees for professional appointments

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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 law dealt with in this Ruling is section 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997').

Class of persons

3. The class of persons to which this Ruling applies is:
- employees of the RMIT University ('the University'), including professors and associate professors; and
 - employees of wholly owned companies of the University, including directors of such companies, who are seconded to the University.

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 11 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- (b) this Ruling may be withdrawn or modified.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 Class Ruling applies to years of income commencing both before and after its date of issue. 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 information provided by the University.

10. From time to time, appropriately qualified employees of the University, most often professors or associate professors, but also including directors or senior employees on secondment to the University from companies which are wholly owned subsidiaries of the University, are offered directorships or consultancies by organisations outside the University. Such persons will be referred to as 'outside appointees' in this Ruling because of their 'outside appointment'. These positions are offered because of the individual's association with the University and the perceived prestige and resources that this link will bring to the employing organisation. The University considers that the appointments arise within the scope of the outside appointee's duties as employees of the University.

11. Any payments for the services of the outside appointees will where possible be made directly to the University. If this cannot be done, the outside appointees will pass on to the University any payment they receive.

Ruling

12. Fees paid to employees of the University and to employees on secondment to the University from companies that are wholly owned subsidiaries of the University, which are either passed on to the University (where received by the employee) or paid directly to the University, do not form part of the assessable income of the employee.

Explanations

13. Under section 6-5 of the ITAA 1997, the assessable income of taxpayers includes their ordinary income. Directors' fees and consultancy fees are ordinary income. Whether the University employees covered by this Ruling are assessable on the directors'/consultancy fees paid to, or in respect of, them is dependant upon whether they or the University derived those fees.

14. In Taxation Determination TD 97/2, the Commissioner considered that a partner in a partnership accepting an appointment as a company director in the course of carrying on the usual business of the partnership did so as agent of the partnership, and was not assessable on any directors' fees paid to him but passed on to the

partnership. In that circumstance, it was accepted that the partnership and not the partner had derived the directors' fees.

15. The employees of the University have taken up outside directorships and consultancies because they are employees of the University. The opportunity to do so arose from the employee's relationship with the University as it was based on the University's reputation within the private sector. The University regards the outside appointees as holding the appointment in the course of their employment with the University.

16. Where the directors' or consultancy fees are paid directly to the University, the outside appointees do not derive income from the fees as the fees are not received by them. The appointees are required to pass on any directors'/consultancy fees received from their outside appointment to the University. The fiduciary relationship between the outside appointee and the University is such that should the fees not be passed on, the University will be able to sue for recovery of those fees. The fees are not the income of the outside appointees but that of the University.

17. If the outside appointees have a legal entitlement to the fees, they hold those fees in a constructive trust for the University. They do not have beneficial ownership of those fees.

18. For income tax purposes, a person holding an amount of income as constructive trustee for another person is not the beneficial owner of that income and cannot be regarded as having derived that income. It follows that they are not assessable on that income.

19. Fees paid to employees of the University who hold outside appointments that are passed on directly or indirectly to the University are not considered to be assessable income of the employee under section 6-5 of the ITAA 1997.

Detailed contents list

20. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation28 August 2002

Previous draft:

Not previously released in draft form

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 6-5
- Copyright Act 1968

*Related Rulings/Determinations:*TR92/1; TR92/20; TD 97/2; TR97/16;
CR 2001/1ATO References

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