



CR 2003/84 - Income tax: Bond University - Student PhD Research Scholarships

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Class Ruling

Income tax: Bond University – Student PhD 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.*

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

What this Class Ruling is about

1. This Ruling sets out the Commissioner’s opinion on the way in which the ‘tax laws’ 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, 6-10, 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 which this Ruling applies is students who receive a PhD Research Scholarship from Bond 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 14 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- (b) this Ruling may be withdrawn or modified.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 Ruling applies from 1 July 2003. However, this 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 and 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;
- 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:

- application for Class Ruling dated 20 June 2003;
- e-mail from a representative of the applicant dated 10 July 2003; and
- record of telephone conversation between a representative of the applicant and an officer of the Australian Taxation Office.

10. Bond University is planning to offer PhD Research Scholarships to prospective students who meet certain selection criteria which includes a Bachelor's degree with at least upper second class honours or equivalent from a recognised University. While only one School was currently planning to offer a PhD Research Scholarship, it is envisaged that awarding research scholarships will be on-going with one or two scholarships awarded each semester.

11. The University will offer successful applicants an annual stipend, paid on a fortnightly basis during the term of the course and an annual tuition fee waiver. Both the stipend and the fee waiver may vary from year to year. The purpose of the scholarships is to assist students to meet the costs of their studies. Candidature for scholarships will be restricted to full time students.

12. Selection for the scholarships will involve an assessment of written applications against selection criteria and will be primarily based on academic merit. It is not a requirement or condition of the scholarship that the student engage (or engage if required) in employment or enter a contract of service with the University either during or after the course. Some scholarship holders may be offered limited or part-time employment with the University as teaching or research assistants to supplement their incomes however scholarship holders are not required to accept the employment.

13. The student will determine their research topic, they will be free to publish the results of their research and they will have title to any intellectual property resulting from their PhD study.

14. The Academic Senate and the Dean of the relevant school will appoint the person who supervises each PhD student. Scholarship holders will be required to provide a report, each semester, to their supervisor, outlining their progress. A copy of the completed thesis will be placed in the University library.

Ruling

15. The stipend paid by Bond University to students who hold a PhD Research Scholarship is considered ordinary income under subsection 6-5(1) of the ITAA 1997. However, the stipend will be

exempt income under Item 2.1A of section 51-10 of the ITAA 1997 when paid to a full-time student.

16. The waived tuition fees are not income of the student.

Explanation

17. 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).

Stipend

18. Payments made by Bond University to PhD Research Scholarship holders are considered ordinary income due to the periodical nature of the payments.

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

20. 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;
- subject to the exceptions set out in section 51-35 of the ITAA 1997.

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

21. Yes. The scholarships will only be awarded to full-time students enrolled in PhD research degree courses.

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

22. The words 'scholarship, bursary, educational allowance or educational assistance' are not defined in 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'.

23. 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*. 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...’

24. 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) 6 ALR 457; 75 ATC 4156; 5 ATR 450).

25. There will be a limited number of scholarships made available each year and recipients will be selected having regard to submitted written applications and academic merit. It is accepted that applicants for the scholarships are subject to a competitive process and that the scholarships are granted on merit.

26. The scholarships are provided to students to assist with the costs of their studies. There is an educational purpose behind the provision of the scholarships. The payments are therefore made by way of a scholarship, bursary, educational allowance or educational assistance.

Do the exceptions in section 51-35 apply?

27. Section 51-35 of the ITAA 1997, broadly stated, 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); 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?

28. Paragraph 51-35(a) excludes from exemption Commonwealth payments for assistance for secondary education or in connection with the education of isolated children. The scholarship payments are not payments of this kind.

29. Paragraph 51-35(b) excludes from exemption Commonwealth education or training payments, as defined in section 52-145. The scholarship payments are not payments of this kind.

30. Paragraph 51-35(f) excludes from exemption scholarship payments that are education entry payments under Part 2.13A of the *Social Security Act 1991*. The scholarship payments are not payments of this kind.

Are the payments made on the condition that the student will (or will if required) enter into an employment contract or a contract for labour with the payer?

31. Paragraphs 51-35(c) and (d) of the ITAA 1997 exclude payments from exemption if they represent:

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

32. The scholarship holders will not be required to be, or become, employees of the University and will have no right or expectation of future employment with the University or any other party. Some scholarship holders may take up part-time employment with the University as teaching or research assistants but the employment is not a condition of the receipt of the scholarship.

33. Reports will be required to be submitted by the student to the university as part of the process of assessment for the course. This however is not considered to constitute a requirement to perform work for the scholarship provider.

34. The scholarship holders will not be required to enter into a contract for labour with the University or any other party.

Are the scholarships provided principally for educational purposes?

35. The scholarships will only be provided to students who are enrolled in PhD research degrees with the University.

36. Payment of the scholarship is to assist selected students with the cost of their research studies.

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

Conclusion

38. None of the exclusions in section 51-35 of the ITAA 1997 apply to the scholarship payments.

Tuition fee waiver

39. The tuition fee waiver Bond University grants to PhD Research Scholarship holders is neither ordinary income nor statutory income (section 6-10 of the ITAA 1997). As the fee waiver is not income, it is not subject to income tax under any provision of the ITAA 1997.

Detailed Contents List

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Commissioner of Taxation

1 October 2003

<i>Previous Draft</i>	- ITAA 1997 51-10
Not previously issued in draft form.	- ITAA 1997 51-30
	- ITAA 1997 51-35
<i>Related Rulings/Determinations:</i>	- ITAA 1997 51-35(a)
TR 92/1; TR 92/20; TR 93/39;	- ITAA 1997 51-35(b)
TR 97/16; CR 2001/1	- ITAA 1997 51-35(c)
	- ITAA 1997 51-35(d)
	- ITAA 1997 51-35(e)
<i>Subject references:</i>	- ITAA 1997 51-35(f)
- exempt income	- ITAA 1997 52-145
- post graduate research	- Social Security Act 1991 2.13A
- scholarships	- Copyright Act 1968
<i>Legislative references:</i>	<i>Case references:</i>
- TAA 1953 Pt IVAAA	- FC of T v. Hall (1975) 6 ALR 457;
- ITAA 1936 23(z)	75 ATC 4156; 5 ATR 450
- ITAA 1997 6-5	- Re Leitch, deceased 1965 VR 204
- ITAA 1997 6-5(1)	
- ITAA 1997 6-10	
- ITAA 1997 51-1	

ATO references

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