


CR 2004/12 - Income tax: Defence Science and Technology Organisation Summer Vacation Student Research Scholarships

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Class Ruling

Income tax: Defence Science and Technology Organisation Summer Vacation Student 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, 6-20, 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 tertiary students who obtain a Summer Vacation Research Scholarship from the Defence Science and Technology Organisation (DSTO).

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 23 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 - (b) this Ruling may be withdrawn or modified.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, 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*;
- 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 23 October 2003; and

- The October 2003 version of the Summer Vacation Scholarship Agreement.

10. The DSTO is the scientific research and development arm of the Department of Defence.

11. Each year, commencing in 2003, DSTO will make available a limited number of 'Summer Vacation Research Scholarships' to full-time students that will be advertised nationally through Australian universities during the summer months.

12. The primary objective of the scholarship is to support the education of promising tertiary students by providing them with a means by which they can engage in and gain experience in research during the university summer vacation period. The scholarship aims to provide students with:

- Practical experience in a research area relevant to their degree;
- An insight into future opportunities in that area of research; and
- An incentive to pursue higher studies and a career in research or academia.

13. The Scholarship will be conferred as a reward for academic merit. Applicants will be required to submit a copy of their Academic Transcript and a Reference from a member of the academic staff from their current course of study. Scholarship recipients will be selected by the DSTO on the basis of their written applications through a competitive selection process using the following criteria:

- a) The alignment between the student's area of study and the proposed project;
- b) The student's academic achievement;
- c) An academic reference from the University staff member; and
- d) Other relevant experience.

14. As a minimum, all scholarship recipients must:

- a) Be Australian citizens;
- b) Be full-time students enrolled in a relevant course of tertiary study;
- c) Have completed a minimum of two years (full-time equivalent) undergraduate study; and
- d) Undergo a Defence security clearance that will enable them to enter DSTO establishments.

15. DSTO will allocate scholarship recipients a challenging research project that is closely aligned with their current course of study, and has been approved by DSTO Senior Executive (SES Band 2 and above).

16. The scholarship stipend is currently set at \$3,600 and will be paid to the scholarship recipient in instalments of \$600 on a fortnightly basis over the twelve-week summer vacation period. This payment is not provided as a fee for services rendered. The stipend constitutes a 'living allowance' that is provided to support the scholarship recipient financially while they conduct their research project over the summer vacation period.

17. Selection for the scholarships will be on the basis of academic merit by DSTO through a competitive selection exercise. The DSTO intends to provide the scholarships to enable the students to engage in and gain experience in research during the university summer vacation period. The summer vacation research scholarships that DSTO will be offering to students do not contain any conditions that would require the recipients of the award to become an employee of the DSTO at any stage in the future. The recipients will not be required to enter any contracts with the DSTO for their labour and for the purpose of the scholarship, students will not be entitled to any conditions of employment such as paid leave.

18. DSTO will provide a flexible approach to the scholarship recipient's working patterns and arrangements. The scholarship recipients will not be expected to work a set pattern of hours, but as a guide will be expected to maintain contact hours with DSTO during the standard operational bandwidth of 8.30am to 5.00pm, primarily to ensure an adequate level of supervision is provided to safeguard their health, safety and well being in the work place.

19. Irregular attendance of itself would not be grounds for DSTO to cease paying a student. DSTO would only cease payments to students in the event that their failure to attend on a regular basis affects their ability to conduct their research project to a satisfactory level.

20. During the course of the summer vacation, the recipient will undertake research on-site at DSTO establishments, using DSTO research equipment and facilities under local supervision by DSTO staff and produce research findings. The scholarship recipients will be expected to make an oral presentation elaborating on their research experience to an audience of their fellow scholarship recipients and DSTO supervisors and Senior Executives, at a Reporting Seminar to be held at the conclusion of the program in February.

21. During the presentation the student is to provide a summary of their experiences at DSTO, detail any relevant skills they have

obtained as a result of the placement and give a brief description of the research they have undertaken.

22. All intellectual property generated by the student during and in connection with the placement vests upon its creation in the Commonwealth.

23. Each scholarship recipient will receive a written statement of completion and evaluation of their performance and conduct from the DSTO supervisor at the conclusion of the program.

Ruling

24. The payments made by the DSTO under the Summer Vacation Student Research Scholarships are considered ordinary income and are therefore in principle, assessable income under subsection 6-5(1) of the ITAA 1997. However, these payments will be exempt from income tax under Item 2.1A in the table in section 51-10 of the ITAA 1997.

Explanation

25. A payment or other benefit received by a taxpayer is assessable income if it is:

- income in the ordinary sense of the word (ordinary income); or
- an amount or benefit that through the operation of the provisions of the tax law is included in assessable income (statutory income).

Ordinary income

26. 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).

27. Relevant factors in determining whether an amount is ordinary income include:

- whether the payment is the product of any employment, services rendered, or any business;
- the quality or character of the payment in the hands of the recipient;
- the form of the receipt, that is, whether it is received as a lump sum or periodically; and

- the motive of the person making the payment. Motive, however, is rarely decisive as in many cases a mixture of motives may exist.

28. Payments made by the DSTO under the Summer Vacation Student Research Scholarships are considered to be ordinary income as they are periodical payments and are depended upon by the recipient (*Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652).

29. As the payments are considered to be ordinary income, it is not necessary to consider whether they could also be statutory income.

Exempt Income

30. Subsection 6-20(1) of the ITAA 1997 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.

31. Certain amounts of ordinary income are exempt from income tax under section 51-1 of the ITAA 1997 if the amount is of a type covered by the tables in Division 51 of the ITAA 1997.

32. Item 2.1A in the table in section 51-10 of the ITAA 1997 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;
- subject to the exceptions set out in section 51-35 of the ITAA 1997.

These three conditions are discussed below.

Are scholarship holder's full-time students at a school, college or university?

33. Yes. The scholarships will only be awarded to full-time students enrolled at a tertiary education institution.

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

34. 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’.

35. 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 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’.

36. 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 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; (1975) 5 ATR 450 (*Halls case*)).

37. There will be a limited number of scholarships made available each year and recipients will be selected on the basis of academic merit by DSTO through a competitive selection process.

38. In *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362 (at 385-6) Isaacs J said that for purposes to be educational they must provide for the giving or imparting of instruction. Rath J in *Halls' case* held that research conducted under supervision at a university is institutional in character and therefore educational.

39. The scholarships are provided to students to enable them to engage in and gain experience in research. Although it is not a course requirement the research experience is relevant to and intended to assist in their studies. Therefore, it is accepted that there is an educational purpose in 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?

40. 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) of the ITAA 1997;
- 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) of the ITAA 1997; and

- payments made under a scholarship that is not provided principally for educational purposes: paragraph 51-35(e) of the ITAA 1997.

Are the payments Commonwealth education or training payments?

41. Paragraph 51-35(a) of the ITAA 1997 excludes from income tax exemption Commonwealth payments for secondary education assistance or in connection with the education of isolated children. The scholarship payments are not payments of this kind.

42. Paragraph 51-35(b) of the ITAA 1997 excludes from exemption Commonwealth education or training payments, as defined in section 52-145 of the ITAA 1997. The scholarship payments are not payments of this kind.

43. Paragraph 51-35(f) of the ITAA 1997 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) become an employee of or enter into a contract for labour with the payer?

44. 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;
- (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.

45. The scholarship agreement does not require the recipients to be, or become, employees of the DSTO. The payment of the scholarship does not confer a right to, or expectation of, future employment with the DSTO.

46. The scholarship agreement does not require the recipients to enter into a contract for labour with the DSTO.

47. The scholarship agreement requires the recipients to take part in research being conducted by DSTO. The research will take place,

under supervision, on site at DSTO establishments, using DSTO research equipment and facilities. The recipients will be expected to make an oral presentation elaborating on their research experience at the conclusion of the program. All intellectual property generated by the student during and in connection with the placement vests upon its creation in the Commonwealth. This is not considered to constitute a requirement to perform work for the scholarship provider under a contract for labour.

Are the scholarships provided principally for educational purposes?

48. The scholarships will only be provided to students who are enrolled at a tertiary education institution.

49. The stated purpose of the scholarship is to enable the recipients to engage in and gain experience in scientific research. DSTO will appoint a supervisor for the duration of the placement.

50. Payment of the scholarship is provided to support the scholarship recipient financially while they conduct their research project over the summer vacation period and is not provided as a fee for services rendered.

51. The payments made under the terms of this arrangement are considered to be provided principally for educational purposes and therefore are not excluded from exemption by paragraph 51-35(e) of the ITAA 1997.

Conclusion

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

Detailed contents list

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Commissioner of Taxation

21 January 2004

<i>Previous draft:</i>	- ITAA 1997 51-1
Not previously released in draft form	- ITAA 1997 51-10
	- 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; TR	- ITAA 1997 51-35(b)
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; (1975) 5 ATR 450
- ITAA 1997 Div 51	- Re Leitch, deceased [1965] VR 204
- ITAA 1997 6-5	- Chesterman v. Federal Commissioner
- ITAA 1997 6-5(1)	of Taxation (1923) 32 CLR 362
- ITAA 1997 6-20	
- ITAA 1997 6-20(1)	

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- Federal Commissioner of Taxation v. 5322; (1989) 20 ATR 1652
Ranson (1989) 25 FCR 57; 89 ATC

ATO References

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