


CR 2004/23 - Income tax: University of Canberra Postgraduate Research Scholarships and Vice-Chancellor's Postgraduate Research Scholarships

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Class Ruling

Income tax: University of Canberra Postgraduate Research Scholarships and Vice-Chancellor's Postgraduate 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 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, 6-20, 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 are tertiary students who receive either a University of Canberra Postgraduate Research Scholarship or a Vice-Chancellor's Postgraduate Research Scholarship.

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 in paragraphs 9 to 25.
6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:
 - 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
 - this Ruling may be withdrawn or modified.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 are:

- Applications for class ruling dated 19 September 2003;
- University of Canberra Postgraduate Research Scholarship guidelines; and
- Selection Strategy for 2004 (Resolution SBC 2003/1/1 of 14 March 2003).

10. The University of Canberra will offer 6 Postgraduate Research Scholarships to selected students.

11. The two highest ranked applicants based on merit will be awarded the Vice-Chancellor's Postgraduate research scholarships. Another four applicants will be awarded a University of Canberra Postgraduate research scholarship.

12. The scholarships aim to encourage students with exceptional research promise to undertake a higher degree on a full time basis at the Doctoral or Masters Degree level.

13. The scholarships are available in all disciplines that are offered at the University of Canberra.

14. To be eligible for the scholarships the awardees must:

- be full-time students enrolled in a post-graduate research degree at the University of Canberra;
- hold a bachelor's degree with first class honours, or a masters degree or equivalent qualifications; and
- be able to demonstrate a capacity to make a significant contribution or original research within the University's areas of research strength.

15. The selection process will be based on the approved Selection Strategy for 2004 (Resolution SBC 2003/1/1 of 14 March 2003).

16. The strategy includes:

- the formation of selection sub-committee to allocate the scholarships;
- the selection sub-committee to build an overall ranking list from all disciplines based on merit; and

- merit to be based on past academic achievement, research potential and publishing history.

17. The tenure of the scholarships will be for a period of three years with a possible extension of six months if there are extenuating circumstances relating to study.

18. Awardees are not required to render any service whether as an employee or under a contract for labour to the University of Canberra either during the tenure of the scholarship or upon its completion.

19. Applicants may be Australian citizens, Australian Permanent Residents, New Zealand citizens or international students.

20. The conditions of the scholarship require the awardees to:

- agree to the conditions which are based on the conditions applying to the Australian Postgraduate Award for domestic students, International Postgraduate research scholarships for international students and with the Higher degrees by Research Policy and Procedure;
- achieve a reasonable rate of academic progress; and
- agree that any resulting intellectual property is subject to the University of Canberra's policy on intellectual property.

However, if their enrolment in the higher degree by research program is terminated, the scholarship is relinquished.

21. The University of Canberra Postgraduate Research Scholarships will pay a stipend equal to the amount that is paid by the Commonwealth to persons who have been awarded an Australian Postgraduate Award. The recipients of the Vice-Chancellor's Postgraduate Research Scholarship will be paid a stipend of a greater amount.

22. In addition to the stipend attached to the Vice-Chancellor's Postgraduate research scholarship and the University of Canberra postgraduate research scholarship, the awardees will receive:

- a research training scheme place (Australian students only)
- a waiver of full-tuition fees (international students only);
- thesis production expenses;
- one return airfare per annum from home to Canberra for overseas and interstate students;
- relocation expenses for Australian resident students.

23. A research training scheme place is a condition of admission for applicants for higher degrees in research. There is no payment associated with a research training scheme place. A student receiving a research training scheme place is not required to pay HECS. The HECS liability is funded by the University through an allocation that the University receives via a grant from the Commonwealth.

24. Successful awardees of the Vice-Chancellor's or University of Canberra Postgraduate research scholarships may also receive either the W J Weeden scholarship or a University of Canberra top up scholarship.

25. The W J Weeden scholarship and University of Canberra top up scholarships are subject to the same terms and conditions as the Vice-Chancellor's Postgraduate research scholarships and University of Canberra's Postgraduate research scholarships.

Ruling

26. The payments described in paragraph 21, 22 and 23 of this ruling (except the waiver of full tuition fees) made to students who have been awarded either a Vice-Chancellor's Postgraduate Research Scholarship or a University of Canberra Postgraduate Research Scholarship are considered ordinary income and therefore in principle, assessable income under subsection 6-5(1) of the ITAA 1997.

27. However these payments will be exempt from income tax under Item 2.1A in the table in section 51-10 of the ITAA 1997.

28. The waived HECS liability for domestic students is not ordinary income or statutory income of the student and will not be subject to income tax under any provision of the ITAA 1997.

29. The waived tuition fees for international students are not ordinary income or statutory income of the student and will not be subject to income tax under any provision of the ITAA 1997.

Explanation

30. 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

31. 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).

32. 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.

Payments

33. Payments made under the University of Canberra postgraduate 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).

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

HECS liability

35. The waived HECS liability for domestic students awarded a research training place does not have the character of ordinary income and therefore is not assessable income under section 6-5 of the ITAA 1997. In addition, it is not an amount or benefit that through the operation of the provisions of the tax law is included in assessable income under section 6-10 of the ITAA 1997 (statutory income).

Tuition fee waiver

36. The tuition fee waiver provided under the University of Canberra scholarships awarded to international students does not have the character of ordinary income and therefore is not assessable income under section 6-5 of the ITAA 1997. In addition it is not an amount or benefit that through the operation of the provisions of the

tax law is included in assessable income under section 6-10 of the ITAA 1997.

Exempt Income

37. 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.

38. 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 listed in Division 51 of the ITAA 1997.

39. 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; and
- are not subject to the exceptions set out in section 51-35 of the ITAA 1997.

The three conditions are discussed below.

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

40. Yes. The scholarships will only be awarded to full-time post-graduate students enrolled at the University of Canberra. Students who are not enrolled on a full-time basis are not eligible to be awarded a scholarship.

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

41. 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'.

42. 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’.

43. 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; 5 ATR 450 (*Halls Case*)).

44. The selection process for the University of Canberra Postgraduate Research Scholarships will be based on the approved Selection Strategy for 2004 (Resolution SBC 2003/1/1 of 14 March 2003).

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

46. 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.

47. The purpose of the University of Canberra Postgraduate Research Scholarship and the Vice-Chancellor’s Postgraduate Research Scholarship is to encourage students with exceptional research promise to undertake a higher degree on a full time basis at the Doctoral or Masters Degree Level.

48. Therefore it is accepted that there is an educational purpose behind the provision of the scholarships.

49. The payments are therefore made by way of a scholarship, bursary, educational allowance or educational assistance.

Do the exceptions in section 51-35 apply?

50. 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) 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?

51. No. The payments made under the scholarship are not of a kind covered by paragraphs 51-35(a),(b) or (f) of the ITAA 1997.

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?

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

- 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;
- 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.

53. Awardees are not required to render any service to the University of Canberra whether as an employee or under a contract for their labour either during the tenure of the scholarship or upon its completion.

Are the scholarships provided principally for educational purposes?

54. Yes, it is accepted for the purpose of paragraph 51-35(e) of the ITAA 1997 that the scholarships are provided principally for educational purposes.

Detailed contents list

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Related Rulings/Determinations:
 CR 2001/1; TR 92/1; TR 92/20;
 TR 93/39; TR 97/16;

- ITAA 1997 51-35(f)
- Copyright Act 1968
- TAA 1953 Part IVA

Legislative references:

- ITAA 1936 23(z)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-20
- ITAA 1997 6-20(1)
- ITAA 1997 51-1
- ITAA 1997 51-10
- ITAA 1997 51-35
- ITAA 1997 51-35(a)
- ITAA 1997 51-35(b)
- ITAA 1997 51-35(c)
- ITAA 1997 51-35(d)
- ITAA 1997 51-35(e)

Case references:

- *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362 (at 385-6)
- *FC of T v. Hall* (1975) 6 ALR 457; 75 ATC 4156; 5 ATR 450 (Halls Case)
- *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652
- *Re Leitch, deceased*, 1965 VR 204

Other references

- Macquarie Dictionary 2nd Revised Edition

ATO references

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