

CR 2004/26 - Income tax: Swinburne University Bachelor of Information Technology Scholarship



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Class Ruling

Income tax: Swinburne University Bachelor of Information Technology Scholarship

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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**, **Previous Ruling**, **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 students who receive a scholarship when admitted to the Swinburne Bachelor of Information Technology course. In this Ruling these persons are referred to as 'students'.

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 10 to 20 in this Ruling.

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- this Ruling may be withdrawn or modified.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 2004. 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 and 22 of Taxation Ruling TR 92/20).

9. 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.

Previous Ruling

10. Class Ruling CR 2001/8 dealt with this issue and applies to arrangements made between 18 April 2001 to 30 June 2004.

Arrangement

11. The arrangement that is the subject of this Ruling is described below. This description is based on information provided by Swinburne University of Technology ('the University'). The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Class Ruling dated 9 December 2003.

12. This arrangement is called the Swinburne University Bachelor of Information Technology Scholarship. Participants enter into an arrangement to obtain a scholarship for the three years it takes to complete a Bachelor of Information Technology.

13. The Bachelor of Information Technology program ('the Course') is offered only on a full-time basis.

14. All students admitted to the Bachelor of Information Technology program receive a scholarship for each of the three years of the course. The amount of the scholarship is currently approximately \$9,000 per annum. Students are paid the scholarship on a fortnightly basis. The scholarship is paid by the University directly to the student.

15. The scholarship is granted by the University from a fund made up of contributions from sponsoring organisations. Sponsoring organisations do not directly identify students when providing the scholarship funds. They can participate in student selection for the course by assisting in interviewing and assessing a course applicant's suitability for the course.

16. The selection process is based on their ENTER score and interview where a panel of a University and an industry representative gauges the applicant's communication skills. The ENTER is an Equivalent National Tertiary Entrance Rank. It is a standard measure of a student's academic ability and hence suitability for the undergraduate program that the student is applying for. The ENTER score required to be accepted into a course varies from year to year as it is the product of the demand for and the supply of places in that particular course. Applicants who are deemed unsuitable in the interview will not obtain a place in the course irrespective of their ENTER score.

17. The program is accelerated to include the equivalent of four years of study in three years and students undertake two semesters of full-time study and five subjects of the standard full-time four subjects per semester of academic study to achieve this. Hence there is little time for students to work to fund their studies. The scholarship enables students to focus solely on their academic and industry based study.

18. Students undertaking the course are required to complete two Industry Based Learning ('IBL') segments. An IBL segment involves the student working at a sponsoring organisation for a period of twenty weeks. This provides the student with a valuable opportunity to apply their academic knowledge in a working environment. The students are not paid a salary by the organisations. All IBL placements in the Course are made with the sponsoring organisations.

19. The number of students granted the scholarship varies year to year but the intake is generally around the mid 30's.

20. The University places no additional requirements on students, either during or after completion of the course.

21. Students are not required to engage in employment with a sponsor after graduating and sponsors are not required to offer employment to any of the students after their graduation from the Course.

Ruling

22. The payments made as described in paragraph 12 of this Ruling to students awarded a Swinburne University Bachelor of Technology Scholarship 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

23. 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

24. 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).

25. 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.

26. Payments made by the University under the Swinburne University Bachelor of Information Technology Scholarship 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).

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

Exempt Income

28. 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.

29. 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 the tables in Division 51 of the ITAA 1997.

30. 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 scholarship, bursary, educational allowance or educational assistance;
- subject to the exceptions set out in section 51-35 of the ITAA 1997.

The three conditions are discussed below.

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

31. Yes. The scholarship will only be awarded to students admitted to the Bachelor of Information Technology which is only offered by Swinburne University of Technology on a full-time basis.

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

32. 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'. 'Student' is defined as 'one who is engaged in a course of study and instruction at a college, university, or professional or technical school' and 'one who studies a subject systematically or in detail'.

33. 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...'.

34. 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*).

35. The scholarships are made available each year to all students who are admitted to the Bachelor of Information Technology Course. The student scholarship is granted by the University from a fund derived by contributions from sponsoring organisations. Sponsoring organisations do not directly identify students when providing the scholarship funds. They can participate in student selection for the course by assisting in interviewing and assessing a course applicant's suitability for the course.

36. 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.

37. Students undertaking the course are required to complete two Industry Based Learning ('IBL') segments. An IBL segment involves the student working at a sponsoring organisation for a period of twenty weeks. This provides the student with a valuable opportunity to apply their academic knowledge in a working environment.

38. 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?

39. 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?

40. 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?

41. 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.

42. In *FC of T v. Ranson* (1989) 86 ALR 267; (1989) 89 ATC 4353; (1989) 20 ATR 488, the Federal Court took the view that the words 'upon condition' do not require a contract between the parties to exist or any other form of legal relationship. The Court held that the exemption does not apply where, as a matter of ordinary language, it can be said that the receipt of the scholarship amount is conditional on the recipient working with the payer if the payer so requires.

43. The students are required to complete two IBL segments which involves working at a sponsoring organisation for a period of forty weeks so that students can apply their academic knowledge in a working environment. The students are not paid by the sponsoring organisations. It is accepted that this is an integral part of the education of the students and is not employment or a contract for labour by the student with the sponsoring organisation. In addition, students are not required to engage in employment with a sponsor after graduating and sponsors are not required to offer employment to any of the students after graduation from the course.

44. Also, there is no obligation for the student to render any service to the University whether as an employee or under a contract, either while studying or after completion of the course.

Are the scholarships provided principally for educational purposes?

45. Yes. It is accepted that the payments made under the terms of this scholarship are provided principally for educational purposes and therefore are not excluded from exemption by paragraph 51-35(e) of the ITAA 1997.

Detailed contents list

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

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Commissioner of Taxation

17 March 2004

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

CR 2001/8

Subject references:

- exempt income
- scholarships
- postgraduate research

Legislative references:

- ITAA 1953 Part IVAAA
- ITAA 1936 23(z)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-20
- ITAA 1997 6-20(1)
- ITAA 1997 Div 51
- ITAA 1997 51-1
- ITAA 1997 51-10
- ITAA 1997 51-35
- ITAA 1997 51-35(a)
- ITAA 1997 51-35(b)

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- ITAA 1997 51-35(c)
- ITAA 1997 51-35(d)
- ITAA 1997 51-35(e)
- ITAA 1997 51-35(f)
- ITAA 1997 52-145
- Copyright Act 1968
- Social Security Act 1991 2.13A

Case references:

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

- Re Leitch, deceased [1965] VR 204
- Chesterman v. Federal Commissioner of Taxation (1923) 32 CLR 362
- FC of T v. Hall (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450

Other references:

- Macquarie Dictionary 2nd Revised Edition

ATO references

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