



# ***CR 2004/36 - Income tax: Department of Education Services WA - Millennium Indigenous Teacher Scholarships***

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2003*



## Class Ruling

### Income tax: Department of Education Services WA – Millennium Indigenous Teacher Scholarships

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#### **Preamble**

*The number, subject heading, **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**

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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, 6-10, 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 under the Millennium Indigenous Teacher Scholarship Program administered by the Department of Education Services WA (DES).

#### **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 21.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- 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- this Ruling may be withdrawn or modified.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

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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

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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 18 November 2003;
- records of telephone conversations between a representative of the applicant and an officer of the Australian Taxation Office.

10. The scholarship program is a West Australian initiative funded by the Commonwealth through the National Indigenous English Literacy and Numeracy Strategy.

11. The program is administered by DES on behalf of and in consultation with the WA Department of Education, the WA Catholic Education Office, the Association of Independent Schools of Western Australia and the Commonwealth Department of Education, Science and Training ('the sponsoring organisations').

12. The scholarships, called Millennium Indigenous Teacher Scholarships, are intended to increase the number of indigenous teachers in West Australian schools.

13. The scholarships are only available to Australian Aboriginal or Torres Strait Islander people who are eligible for ABSTUDY.

14. Scholarships will only be awarded to full-time students enrolled in a Bachelor of Education or Graduate Diploma course at a West Australian institution.

15. Selection for the scholarships will be primarily based on merit and will involve an assessment of written applications, academic performance and references.

16. DES will offer successful applicants an annual allowance, paid on a fortnightly basis during the term of the course. DES will also pay the Higher Education Contribution Scheme ('HECS') amounts applicable to the students for the period of the scholarship. The HECS amount will be paid directly to education institutions, on behalf of the students. For some students, DES will make superannuation contributions for their benefit. This is dependent on the individual circumstances of each scholarship holder.

17. The amount of the allowance will vary between students according to need.

18. The period of the scholarship can be up to three years, depending on the qualification sought, but most will run for only one year – the final year of study. Continuation of a scholarship is conditional upon satisfactory performance in the study program and the availability of funding.

19. There is a non-binding expectation that scholarship recipients will, upon graduation, take up a teaching position in a West Australian school. There are no sanctions if a scholarship holder chooses to teach in another State or does not seek a teaching position at the conclusion of their course.

20. Scholarship holders are not guaranteed to receive an offer of employment from any of the sponsoring organisations.

21. The sponsoring organisations are represented on the selection panel but do not have any funding link with individual scholarship holders. While it is expected that the sponsoring organisations will invite applications for employment from graduating students, the sponsoring organisations have no obligation to employ any graduate student as a teacher.

## Ruling

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22. The allowance paid by DES to students who hold a Millennium Indigenous Teacher Scholarship is considered ordinary income and are therefore in principle, assessable income under subsection 6-5(1) of the ITAA 1997. However, the allowance will be exempt from income tax under Item 2.1A in the table in section 51-10 of the ITAA 1997 when paid to a full-time student.

23. The HECS liabilities paid by the scholarship are not ordinary or statutory income of the students.

24. The superannuation contributions made on behalf of the students are not ordinary or statutory income of the students.

## Explanation

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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 DES to students who hold a Millennium Indigenous Teacher Scholarship are considered to be ordinary income due to the periodical nature of the 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 listed in 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; and
- subject to the exceptions set out in section 51-35 of the ITAA 1997.

The three conditions are discussed below.

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

33. Yes. The scholarships will only be awarded to full-time students enrolled in a Bachelor of Education or Graduate Diploma course at a West Australian institution.

### **Are the payments to the scholarship holders 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'. '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'.

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 *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...'

36. 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).

37. There will be a limited number of scholarships 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.

38. 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 of the ITAA 1997 apply?**

39. 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?***

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

41. 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. Subparagraph 52-145(1)(b)(i) of the ITAA 1997 includes a payment by the Commonwealth, or in connection with a payment by the Commonwealth, of an allowance or reimbursement to a student under the ABSTUDY scheme. Although the scholarship is funded by the Commonwealth and the recipient must be eligible to receive ABSTUDY the scholarship is not a payment, or in connection with a payment, of an allowance or reimbursement under the ABSTUDY scheme for the purposes of section 52-145 of the ITAA 1997.

42. Therefore the payments made under the scholarship are not of a kind covered by paragraph 51-35(b) of the ITAA 1997.

***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?***

43. 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.

44. 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.

45. Students are expected, but not required, to work in West Australian schools after graduation. Students who choose to not work in a Western Australian school after graduation are not subject to any sanction. In addition the students are not obliged to seek employment with any sponsoring organisation, nor are they required to accept any employment offer that is made by those or any other organisations.

46. Also, there is no obligation for the scholarship holders to enter into a contract for labour with the Commonwealth or any other party either while studying or after graduation from the course.



47. It is accepted that the payments are not 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.

***Are the scholarships provided principally for educational purposes?***

48. 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.

**HECS payment**

49. The HECS amounts paid on behalf of the students are neither ordinary income nor statutory income (section 6-10 of the ITAA 1997). As the HECS payments are not income, they are not subject to income tax under any provision of the ITAA 1997.

**Superannuation contribution**

50. The superannuation contributions made for the benefit of the students are neither ordinary income nor statutory income of the student.

51. The superannuation contributions are being made for the benefit of students who were in employment prior to accepting a scholarship to replace the contributions the students' employer would have made. Accordingly, the trustee of the superannuation fund is liable for any tax payable on the contributions under Part IX of the ITAA 1936.

## **Detailed contents list**

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**Commissioner of Taxation**

21 April 2004

*Previous draft:*

Not previously issued as a draft

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

- exempt income
- scholarships
- postgraduate research

*Legislative references:*

- ITAA 1936 23(z)
- ITAA 1936 Part IX
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- 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)

- ITAA 1997 51-35(c)

- ITAA 1997 51-35(d)

- ITAA 1997 51-35(e)

- ITAA 1997 51-35(f)

- ITAA 1997 52-145

- ITAA 1997 52-145(1)(b)(i)

- Copyright Act 1968

- TAA 1953 Part IVAAA

*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
- FC of T v. Hall (1975) 6 ALR 457; 75 ATC 4156; 5 ATR 450

*Other references:*

- Macquarie Dictionary 2<sup>nd</sup> Revised Edition

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