



# ***CR 2006/28 - Income tax: Deakin University - The Faculty of Science and Technology Industry Based Learning Program scholarships***

 This cover sheet is provided for information only. It does not form part of *CR 2006/28 - Income tax: Deakin University - The Faculty of Science and Technology Industry Based Learning Program scholarships*

 This document has changed over time. This is a consolidated version of the ruling which was published on *1 October 2005*



## Class Ruling

### Income tax: Deakin University – The Faculty of Science and Technology Industry Based Learning Program scholarships

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#### **1 This Ruling provides you with the following level of protection:**

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, we must apply the law to you in the way set out in the ruling (or in a way that is more favourable for you if we are satisfied that the ruling is incorrect and disadvantages you, and we are not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the 'taxation provision(s)' identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

#### **Relevant taxation provision(s)**

2. The relevant taxation provisions 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 entities**

3. The class of entities to which this Ruling applies are undergraduate students at Deakin University (the University) who receive The Faculty of Science and Technology (FaST) Industry Based Learning (IBL) Program scholarship. In this Ruling they are referred to as 'students'.

## Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 12 to 26 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
  - this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme 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 October 2005. 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. Furthermore, the Ruling only applies to the extent that:
  - it is not later withdrawn by notice in the *Gazette*; or
  - the relevant taxation provisions are not amended.
9. If this Class Ruling is inconsistent with a later public or private ruling, the relevant class of entities may rely on either ruling which applies to them (item 1 of subsection 357-75(1) of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).
10. If this Class Ruling is inconsistent with an earlier private ruling, the private ruling is taken not to have been made if, when the Class Ruling is made, the following two conditions are met:
  - the income year or other period to which the rulings relate has not begun; and
  - the scheme to which the rulings relate has not begun to be carried out.

11. If the above two conditions do not apply, the relevant class of entities may rely on either ruling which applies to them (item 3 of subsection 357-75(1) of Schedule 1 to the TAA).

## **Scheme**

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12. The scheme that is the subject of the Ruling is described below. This description is based on the following documents which are attached to the file record maintained by the Tax Office for this Ruling. 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 scheme are:

- Application for Class Ruling dated 25 November 2005;
- The FaST Industry Based Learning Program summary of the agreement with the sponsoring organisation; and
- Further information provided by the applicant.

13. The University offers a scholarship called the FaST Industry Based Learning Program. The University wishes to assist its students to supplement their academic knowledge with work experience, and to foster beneficial links with industry and business organisations.

14. The IBL Program is only offered to full-time students enrolled at the University. The IBL program is recognised as an academic unit within the University.

15. Sponsoring organisations provide funding to the University. The funding is used by the University to provide the scholarship and to pay associated industry placement costs.

16. The University administers the scholarships.

17. Students will be selected by the University on the basis of:

- an application by the student;
- the academic results of the student; and
- industry interview process.

18. A representative from each of the University and the organisation concerned interview applicants to assess their suitability for the IBL Program. The University makes a final selection of the successful students for the IBL Program.

19. The IBL Program is about helping students prepare for graduate employment by giving them an opportunity to apply and consolidate knowledge gained at University, experience work place culture and work practices, explore career options and develop a professional network. All students in the program are in the midst of their coursework and so they can directly apply the industry knowledge gained to future subjects in their course. The program also provides the student with a valuable opportunity to apply their academic knowledge in a working environment.

20. Placements will span 24 weeks from January to June or July to December. However, the University will also facilitate 12 week placements (typically over the summer as Internships or Vacation Programs) and full year placements. The placements can also be taken part time.

21. The scholarship will be paid to the student in his or her capacity as a student by the University fortnightly. The amount of the scholarship is currently \$13,500 per annum.

22. The University appoints an academic staff member as an IBL supervisor. The IBL supervisor liaises with the organisations before the commencement of placements to make arrangements for supervision of the student. The organisations are responsible for supervision of the student on placement at the organisation.

23. The IBL supervisor monitors the student's progress at regular intervals during placement to ensure:

- that the learning program undertaken by the student is appropriate; and
- that the student is progressing satisfactorily.

24. The student's performance will be assessed according to University assessment procedures and on the basis of:

- reports;
- presentations;
- evaluations; and
- site visits by the University supervisor.

25. It is not a requirement of, or condition of the scholarship that the student becomes an employee of either the University or the organisations, either during or after their undergraduate course. The University and the organisations have no obligation to employ any student who completes the program.

26. A scholarship may be terminated by either the student or the University.

## **Ruling**

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27. The payments made as described in paragraph 21 of this Ruling to students awarded an FaST IBL Program 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.

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**Commissioner of Taxation**

19 April 2006

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## Appendix 1 – Explanation

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❶ ***This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.***

28. 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

29. 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).

30. 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.

31. Payments made by the University under the FaST IBL Program 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).

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

### Exempt income

33. Subsection 6-20(1) of the ITAA 1997 provides that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

34. Certain amounts of ordinary income and statutory 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.

35. 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;
- they are made by way of scholarship, bursary, educational allowance or educational assistance; and
- they 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?**

36. Yes. The FaST IBL Program scholarship will only be awarded to a student who is enrolled full time in an undergraduate course at Deakin University.

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

37. Yes. 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'.

38. Paragraphs 34 to 45 of Taxation Ruling TR 93/39 Income tax: friendly society education funds discuss the meaning of the words 'scholarship, bursary, educational allowance or educational assistance' for the purposes of the former paragraph 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...'.

39. 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).

40. The scholarships are made available each year to full-time undergraduate students at Deakin University. Students are short listed by the University on their application and their academic results. Students short listed by the University are then interviewed by a selection panel. The University makes the final selection of successful students each year for the scholarship. Sponsoring organisations participate in student selection for the scholarship by having a representative on the selection panel. The student scholarships are granted by the University from funds provided from sponsoring organisations. It is accepted that the selection of students is based on merit.

41. 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.

42. The FaST IBL Program scholarship is paid to a student involved in the IBL Program. The purpose of the program is to enhance the student's academic studies. The program is an academic unit within the course being studied by the student.

43. 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?**

44. No. 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?**

45. 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?***

46. No. 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.

47. 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 that' 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.

48. In most cases the placements will span 24 weeks from January to June or July to December. However, the University will also facilitate 12 week placements (typically over the summer as Internships or Vacation Programs) as well as placements spanning the full year (48 weeks). The placements can also be taken part time.

49. All students in the IBL Program are in the midst of their coursework and so they can directly apply the industry knowledge gained to future subjects in their course. The program also provides the student with a valuable opportunity to apply their academic knowledge in a working environment.

50. The students are not paid by the sponsoring organisations. It is accepted that the industry placement 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, either during the course or after graduation, students are not required to engage in employment with a sponsor, and sponsors are not required to offer employment to any of the students.

51. 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?***

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

## **Appendix 2 – Detailed contents list**

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53. The following is a detailed contents list for this Ruling:

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## References

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*Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

TR 93/39

*Subject references:*

- exempt income
- scholarships
- postgraduate research

*Legislative references:*

- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- 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)
- ITAA 1997 51-35(c)

- ITAA 1997 51-35(d)

- ITAA 1997 51-35(e)

- ITAA 1997 51-35(f)

- Copyright Act 1968

*Case references:*

- *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
- *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652
- *In FC of T v. Ranson* (1989) 86 ALR 267; (1989) 89 ATC 4353; (1989) 20 ATR 488
- *Re Leitch, deceased* [1965] VR 204

*Other references:*

- *Macquarie Dictionary* 2nd Revised Edition
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## ATO references

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