

CR 2008/54 - Income tax: Services for Australian Rural and Remote Allied Health: postgraduate scholarships and assistance payments



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Class Ruling

Income tax: Services for Australian Rural and Remote Allied Health: postgraduate scholarships and assistance payments

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① This publication 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 (unless we are satisfied that the ruling is incorrect and disadvantages you, in which case we may apply the law in a way that is more favourable for you – provided 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

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

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997); and
- section 15-2 of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of entities to which this Ruling applies is health professionals who live in rural and remote Australia and are in receipt of a payment under the Australian Rural and Remote Professional Scholarship scheme administered by Services for Australian Rural and Remote Allied Health (SARRAH).

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 13 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

8. This Ruling applies from 1 July 2006.

9. 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 provisions are not amended.

10. 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)).

11. 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.

12. 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

13. The following description of the scheme is based on information provided by the applicant.

14. The Commonwealth Department of Health and Ageing provides funding to SARRAH to administer the Australian Rural and Remote Health Professional Scholarship Scheme (Scholarship scheme).

15. SARRAH is the national body representing rural and remote allied health professionals and the services they provide to the Australian community.

16. SARRAH provides scholarships under the Scholarship scheme to assist allied health professionals who live and work in rural and remote Australia with their continuing professional development. The scholarships are provided as part of an Australian Government initiative to retain health professionals in rural and remote areas.

17. The scholarships provide funding to enable recipients to:

- undertake Continuing Professional Development activities, including short courses;
- upgrade and gain experience from individual clinical placements;
- attend formal post-graduate studies; and
- attend conferences.

18. The scholarships are offered annually and interested health professionals lodge an application which includes an assessment of budgeted costs. The applicants must demonstrate:

- how the scholarship will remove barriers to professional development opportunities; and

- how the professional development will benefit the local community.

19. An independent selection process is undertaken which leads to the development of an order of merit.

20. The scholarships range from less than \$1,000 for example for a conference registration fee, to a capped amount of \$24,000 for a professional doctorate paid over a number of years, up to a maximum of six years. The number of scholarships each year varies according to the mixture of Continuing Professional Education activities funded.

21. Scholarships are paid to:

- Employees of health services (for example, State or Northern Territory Departments of Health, Divisions of General Practice, or Commonwealth funded programs).
- Health professionals in business (private practice).

22. The health professional enters into a scholarship agreement with SARRAH. There is no obligation or condition in the agreement that requires the health professional to provide services to SARRAH in return for the payments.

23. Payments under the scheme are intended to help cover expenses such as registration and course fees (excluding Commonwealth Supported Place fees and HECS-HELP), travel, parking, taxi fares, accommodation, resource material, additional costs for childcare or elder care, and fees for supervision.

24. The funding is not expected to fully fund the professional development activity, but rather contribute towards the costs incurred by the health professional.

25. SARRAH pays the scholarship amount directly to the health professional:

- Conferences, short course and clinical placement – usually, 90% of the budgeted amount will be paid before the relevant expenditure is incurred by the health professional, with the remaining 10% being paid at reconciliation. This enables the payment of early bird registration fees, to take advantage of travel and accommodation discounts).
- Postgraduate students – 90% of the budgeted amount is divided by the number of semesters of the course, and the amount allocated per semester is paid to the health professional on proof of enrolment. At semester end, the student submits receipts for expenditure and proof of continued enrolment. The following semester's funding is then provided. An annual interim report detailing progress is submitted by the student until the final year of study. After the final semester, the remaining 10% is provided on receipt of the final report.

26. A reconciliation of the health professional's total expenditure is examined by SARRAH. If the funding has been expended in an acceptable way, then excess monies do not have to be refunded to SARRAH. However if qualifying expenditure falls significantly short of allocated funding, repayment of that surplus funding is required. Any expenditure in excess of allocation will not be reimbursed.

Ruling

27. All payments received from the Scholarship scheme are assessable income of the recipients.

Health professional in business

28. All payments received from the Scholarship scheme by a recipient in business are assessable as ordinary income under section 6-5.

Employee health professional

29. A series of payments received from the Scholarship scheme by an employee recipient is assessable as ordinary income under section 6-5.

30. A lump sum payment received from the Scholarship scheme by an employee recipient is assessable income under section 15-2.

Commissioner of Taxation

20 August 2008

Appendix 1 – Explanation

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.

31. A payment is assessable income if:
- it is income in the ordinary sense of the word (ordinary income); or
 - it is not ordinary income but through the operation of the provisions of the tax law it is included in assessable income (statutory income).

Ordinary income

32. Subsection 6-5(1) provides that an amount is assessable income if it is income according to ordinary concepts (ordinary income).
33. Case law has established guidelines to assist in determining the nature of a receipt. These include that:
- the nature of a payment is determined by examining the character of the payment in the hands of the recipient;
 - regard must be given to all the facts surrounding a payment, and that as such a broad view must be taken of the taxpayer’s situation;
 - the test for determining if a payment is income or capital is an objective test;
 - the question is not decided by determining whether expenditure by the payer is revenue or capital in nature;
 - the question is not decided by determining whether any expenditure by the recipient is revenue or capital in nature;
 - a payment that is provided for a purpose which is not part of the recipient’s business will not be in the nature of income;
 - periodicity, regularity or recurrence may show a payment to be income; and
 - a payment in a lump sum does not require a conclusion that the payment is capital.

34. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1 the High Court considered that various factors may be relevant in determining whether a receipt is of an income or capital nature. Sometimes, the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

Health professional in business

35. Income from the carrying on of a business is ordinary income, (see *Federal Commissioner of Taxation v. The Myer Emporium Ltd* (1987) 163 CLR 199; 87 ATC 4363; (1987) 18 ATR 693).

36. The Federal Court in *Warner Music Australia Pty Ltd v. Federal Commissioner of Taxation* (1996) 70 FCR 197; 96 ATC 5046; (1996) 34 ATR 171 considered whether an abnormal gain was part of business income. Hill J stated at page 5056 182 that:

...Whether or not the gain itself was ordinary or abnormal, it was so intimately connected with Warners business ...that it must be treated as being an incident of that business, even if not an ordinary incident of that business. As such it is, to use the words of the Full Court in *Myer* 'stamped' with the character of income.

37. A payment to a business to assist with its operating costs or liabilities is ordinary income of the recipient and assessable under section 6-5.¹

38. Expenses incurred in maintaining or increasing knowledge in a person's profession are necessarily incurred in carrying on a profession or calling (see *Federal Commissioner of Taxation v. Finn* (1961) 106 CLR 60; (1961) 12 ATD 348). Accordingly, a payment received from the SARRAH scholarship scheme by a health professional in business for their continuing professional development is ordinary income under section 6-5 because it is a payment 'intimately connected' with the activities of their business.

¹ See paragraph 12 of Taxation Ruling TR 2006/3 Income Tax: government payments to industry to assist entities (including individuals) to continue, commence or cease business.

Employee health professional

Series of scholarship payments

39. A scholarship payment which is received as a series of payments is likely to be ordinary income if:

- it is received in circumstances where the recipient has an expectation of receiving periodical, regular or recurrent payments and the recipient is able to rely on the payments for their regular expenditure; and
- it is the product of any employment of, or services rendered by, the recipient (*Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392).

40. The scholarship payments are provided to assist allied health professionals who live and work in rural and remote Australia with their continuing professional development. They are not a reward for the recipient's employment or for services rendered.

41. However, the series of scholarship payments are made to the recipient in the form of periodical and recurrent payments.

42. As the scholarship payments are provided to the recipient as a series of payments over an agreed period, the recipient is able to rely on those payments.

43. The scholarship payments possess the characteristics of ordinary income and are assessable to the recipient under section 6-5.

Lump sum scholarship payment

44. A lump sum paid by the Scholarship scheme in two instalments is considered to be a lump sum for the purposes of this Ruling.

45. A lump sum scholarship payment provided to a recipient is not periodical or recurrent and cannot be relied upon by the recipient for regular support.

46. The lump sum scholarship payment is not a reward for any employment of, or services rendered by, the recipient.

47. The lump sum payment does not possess the characteristics of ordinary income and is not assessable to the recipient under section 6-5.

Statutory income

48. Section 6-10 provides that a taxpayer's assessable income includes statutory income amounts that are not ordinary income but are included as assessable income by another provision.

49. Section 10-5 of the ITAA 1997 lists provisions about statutory income and included in this list is section 15-2 of the ITAA 1997 (formerly paragraph 26(e) of the *Income Tax Assessment Act 1936* (ITAA 1936)).

50. Section 15-2 provides that the value of all allowances, gratuities, compensation, benefits, bonuses and premiums allowed, given or granted directly or indirectly in respect of employment or services rendered is included in assessable income.

51. A scholarship payment or a series of scholarship payments received by a health professional in business, and a series of scholarship payments received by an employee health professional, are all ordinary income of the recipient. Accordingly, it is only necessary to consider whether section 15-2 applies to a lump sum scholarship payment received by an employee health professional.

Lump sum scholarship payment received by an employee

52. A lump sum scholarship payment made by SARRAH will be statutory income under section 15-2 if it is provided to the recipient in respect of, or for or in relation directly or indirectly to, any employment.

53. In *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274 (*Smith's Case*) Brennan CJ in the High Court indicated that if the employment (or some aspect of employment) is the reason or one of the reasons why the payment is made, it falls within paragraph 26(e) of the ITAA 1936. If employment or some aspect of employment is a substantial reason for the payment, it cannot be said that the payment is merely personal or that the payment is extraneous to employment.

54. In *J & G Knowles & Associates Pty Ltd v. Federal Commissioner of Taxation* (2000) 96 FCR 402; 2000 ATC 4151; (2000) 44 ATR 22 the Federal Court considered the meaning of 'in respect of employment' in the *Fringe Benefits Tax* legislation. The Court noted that what has to be established in determining if a benefit is 'in respect of employment' is whether there is a sufficient or material, rather than a causal, connection or relationship between the benefit and the employment.

55. To receive a scholarship payment from SARRAH, the recipient must be an allied health professional who lives and works in rural or remote Australia. They also need to demonstrate how the continuing professional development activity will enhance their skills and benefit the local community.

56. The scholarship payment is provided to the successful recipient to:

- develop their skills and knowledge in the industry in which they are employed; and
- enable them to provide a better level of service to their local community.

57. The recipient's employment is a substantial or material reason for the payment. The recipient's employment is also a precondition of the recipient receiving the payment.

58. Whilst the scholarship payment is not made by the employer of the recipient, but rather SARRAH, section 15-2 can still apply to the payment. In *Kelly v. Federal Commissioner of Taxation* (1985) 80 FLR 155; 85 ATC 4283; (1985) 16 ATR 478 the court concluded that if a payment is really incidental to employment, it is unimportant whether it comes from the employer or a third party.

59. The lump sum scholarship payment is provided to the recipient in respect of, or for or in relation directly or indirectly to, their employment and is assessable under section 15-2.

Deductibility of expenses

60. Self-education expenses are deductible under section 8-1 of where they have a relevant connection to the recipient's current income earning activities, provided they are not a loss or outgoing of a capital, private or domestic nature.

61. Where self-education expenses are deductible under section 8-1 of the ITAA 1997 but also fall within the definition of 'expenses of self-education' in section 82A of the ITAA 1936, the latter section operates to limit the amount of expenses otherwise allowable under section 8-1.

62. For further information, recipients should refer to Taxation Ruling TR 98/9 which deals with deductibility of self-education expenses.

Appendix 2 – Detailed contents list

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

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 98/9; TR 2006/3

Subject references:

- scholarships

Legislative references:

- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 8-1
- ITAA 1997 10-5
- ITAA 1997 15-2
- ITAA 1936 26(e)
- ITAA 1936 82A
- TAA 1953
- TAA 1953 Sch 1 357-75(1)
- Copyright Act 1968

Case references:

- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1

- Federal Commissioner of Taxation v. Finn (1961) 106 CLR 60; (1961) 12 ATD 348
- Federal Commissioner of Taxation v. Rowe (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392
- Smith v. Federal Commissioner of Taxation (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274
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ATO references

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