

CR 2009/65 - Income tax: CSIRO - National Indigenous Study Awards



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Class Ruling

Income tax: CSIRO – National Indigenous Study Awards

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ⓘ 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, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is 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);
- section 6-10 of the ITAA 1997.
- section 6-15 of the ITAA 1997

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

Class of entities

3. The class of entities to which this Ruling applies is full-time TAFE and University student recipients of the National Indigenous Study Award (NISA) which is awarded and administered by the Commonwealth Scientific and Industrial Research Organisation (CSIRO). In this Ruling a person belonging to this class of entities is referred to as a 'student recipient'.

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 9 to 21 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 2007. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

9. The following description of the scheme is based on information provided by the applicant.
10. The NISA is awarded annually by the CSIRO and is paid under paragraph 9(1)(e) of the *Science and Industry Research Act 1949*.
11. The CSIRO is endeavouring to overcome the gap between Indigenous and non-Indigenous Australian students by making this award.
12. The purpose of the NISA scheme is to increase the participation of Aboriginal and Torres Strait Islander students in science programs at tertiary level. The award provides financial assistance to support Indigenous Australian students in their full-time tertiary study at a TAFE college or university.
13. The award is a single payment to a student recipient (a NISA payment).
14. There are 10 awards of \$2,000 made each year.
15. CSIRO employees are not eligible to apply for an award.
16. The award is intended to defray the student's costs of textbooks, equipment, stationery and administration fees incurred while they are studying the approved full-time course.
17. Preference is given to students enrolled in courses in the areas of Physical Sciences, Computing, Natural Resource Management, Engineering, and Social and Economic sciences.
18. Applicants under the NISA scheme are required to:
- have completed at least one year of a full-time tertiary program;
 - submit a completed application and supporting documents by the closing date, comprising:
 - a covering letter with an essay;
 - a resume including two referees;
 - a copy of results of previous year/s studies;
 - proof of current enrolment; and
 - written endorsement by the Indigenous Centre at the student's tertiary institution.
19. A three member selection panel comprising CSIRO members selects NISA recipients based on:
- assessment of the essay submitted by the student;
 - the student's potential to succeed with tertiary studies; and
 - the student's dedication to tertiary studies.

20. Students who are competitively assessed by the selection panel as award recipients will be offered a NISA.

21. Once the CSIRO informs a student that they have been successful in their application for a NISA award, the student is entitled to receive payment.

Ruling

22. A NISA payment to a student recipient is not ordinary income under section 6-5 or statutory income under section 6-10.

23. As the NISA payment is not ordinary income or statutory income, section 6-15 provides that it is not included in the assessable income of the student recipient.

Commissioner of Taxation

18 November 2009

Appendix 1 – Explanation

① *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.*

24. 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

25. Subsection 6-5(1) provides that the assessable income of a taxpayer includes income according to ordinary concepts (ordinary income).

26. The legislation does not provide specific guidance on the meaning of ordinary income. However, a substantial body of case law exists which identifies likely characteristics. Amounts that are periodical, regular or recurrent and relied upon by the recipient for their regular expenditure are likely to be ordinary income, as are amounts that are 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).

27. A student recipient of a NISA payment cannot be an employee of the CSIRO and does not render services to the CSIRO.

28. A NISA payment is paid in one lump sum of \$2,000.

29. It is not relied upon by a student recipient for their regular maintenance.

30. In view of all of these circumstances it is accepted that a NISA payment is not ordinary income of a student recipient.

Statutory income

31. Section 6-10 provides that the assessable income of a taxpayer includes amounts that are not ordinary income but are included in the taxpayer's assessable income by a provision about assessable income (statutory income).

32. The Commissioner considers that none of the provisions under which an amount would be included in assessable income as statutory income apply to a NISA payment or any part of it.

33. Section 6-15 provides that if an amount is not ordinary income and not statutory income, it is not assessable income.

34. Therefore, in accordance with section 6-15 the NISA payment is not assessable income of a student recipient.

Appendix 2 – Detailed contents list

35. 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 2006/10

Subject references:

- income

Legislative references:

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)

- ITAA 1997 6-10
- ITAA 1997 6-15
- Science and Industry
Research Act 1949 9(1)(e)
- TAA 1953
- Copyright Act 1968

Case references:

- Federal Commissioner of
Taxation v. Rowe (1995) 60
FCR 99; 95 ATC 4691; (1995)
31 ATR 392

ATO references

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