

CR 2010/37 - Income tax: University of Melbourne Master of Veterinary Science (Clinical) and Master of Veterinary Studies scholarship

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Class Ruling

Income tax: University of Melbourne Master of Veterinary Science (Clinical) and Master of Veterinary Studies scholarship

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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; and
- section 51-10 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 comprises full time students at the University of Melbourne (the University) who:

- are simultaneously enrolled in a Master of Veterinary Science (Clinical) Degree and a Master of Veterinary Studies Degree (formerly known as the Advanced Clinical Practicum) where the Master of Veterinary Studies Degree is undertaken at the University Veterinary Hospital and
- receive a Master of Veterinary Science (Clinical) Degree Scholarship (the Scholarship) from the University..

In this Ruling, a person belonging to this class of entities is referred to as a student.

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 20 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 January 2010. 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. The following documents, or relevant parts of them form part of and are to be read with the description:

- Class Ruling application dated 11 February 2010;
- Letter from applicant dated 23 March 2010;
- Letter from applicant dated 25 May 2010;
- Email communications from applicant between 17 June 2010 and 7 July 2010;
- Terms and conditions of the Master of Veterinary Science (Clinical) and the Master of Veterinary Studies; and
- Conditions of Scholarship 2010.

10. The University offers the Scholarship to full-time students enrolled in a three-year combined Master of Veterinary Science (Clinical) degree and Master of Veterinary Studies degree, referred to in the remainder of this Ruling as the Program.

11. The main objective of this Program is to train graduate veterinarians in both clinical research and clinical skills. At the conclusion of the Program, students will have completed sufficient clinical and research training necessary for them to satisfy the credential requirements for a specialist as stipulated by the Australian Veterinary Boards Council.

12. A student is eligible to apply for a Scholarship if the student:

- is an Australian citizen or resident or a New Zealand citizen;
- is enrolled as a student with a full-time load in the Program;
- holds a veterinary degree from a recognised university, and must obtain registration in the State of Victoria as a Veterinary Practitioner; and
- is recommended by the Professor of Veterinary Clinical Sciences of the Faculty of Veterinary Science.

13. Applicants enhance their application if they:

- have published in the peer reviewed literature;
- completed entry to the Australian College of Veterinary Scientists at the membership level by examination (or foreign equivalent); or
- have completed more than 24 months post-graduate clinical experience preferably including a 12-month rotating internship.

14. A student will be or will become ineligible for a scholarship if they:

- held a scholarship previously, unless it was terminated within three months of the commencement of benefits;
- are receiving or receive during the term of the Scholarship another equivalent award, scholarship or salary to undertake the proposed study (an 'equivalent' stipend would be regarded as one greater than 75% of the base Scholarship stipend rate); income earned from sources unrelated to the course of study is not subject to the 75% rule;
- fail to achieve a satisfactory annual progress assessment from their Residency Supervising committee;
- lose their status as a registered Veterinary Practitioner in the State of Victoria;
- are absent from the Veterinary Hospital without the prior approval of their primary supervisor for a total of 10 days (cumulative); or
- the student breaches the conditions of Scholarship in any other way.

15. Under the Program students are rostered on call and for after-hours work at the University of Melbourne Veterinary Teaching Hospital (the Veterinary Hospital), a faculty of the University. Normally, students are required to participate as the primary call-out in their discipline from one half to one third of the time. However, they will always have available back-up from a rostered specialist or alternative member of Faculty or Veterinary hospital staff.

16. Approximately 30% of the student's time is devoted to research. The remaining 70% of time is spent performing evaluation and treatment of referred animal patients within the Veterinary Hospital. Referred patients are those that have been referred by their primary veterinarian for specialist attention. Students are directly supervised whilst attending these cases. These cases enable the student to learn both specialist case management and specialist procedures in a hands-on environment. Students are required to keep an activity log of all such cases.

17. The Program is overseen by a subcommittee of the Veterinary Graduate and Research Training Committee known as the Residency Training Committee.

18. Each student is required to have a Resident Supervisory Committee, consisting of, at a minimum, a qualified primary resident supervisor from within the discipline in which they are enrolled plus two additional staff members, at least one of whom should be from a different but related discipline with which the student has frequent interaction. Committee members may be sought from outside the University if appropriate staff are not available within the School. The purpose of the Committee is to provide advice, direction, support and feedback to the student.

19. A full-time Scholarship carries an annual Scholarship stipend of \$40,000, paid to the student on a fortnightly basis via the University payroll system. The annual stipend may increase in line with the CPI.

20. Under the Program, students are also eligible to receive an educational allowance each year to assist with attendance at conference or training sessions at which they are presenting, or where attendance is deemed by their supervisor to be integral to their clinical training program. This allowance is available to all students enrolled in the Program. The educational allowance is paid up to a maximum of \$2,000 a year (which may be adjusted annually) by way of a reimbursement of expenses on the production of receipts by the student.

Ruling

21. The fortnightly stipend payments made by the University of Melbourne to students undertaking a Master of Veterinary Science (Clinical) Degree and Master of Veterinary Studies Degree, as described in this Ruling, would be assessable income to the student under subsection 6-5(1). However, these payments are exempt from income tax under item 2.1A in the table in section 51-10.

22. The education allowance payments are not assessable to the student as ordinary income under section 6-5; or as statutory income under section 6-10.

Commissioner of Taxation

4 August 2010

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.***

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) provides that the assessable income of a taxpayer includes income according to ordinary concepts (ordinary income).

25. The legislation does not provide specific guidance on the meaning of income according to ordinary concepts. However, a substantial body of case law exists which identifies likely characteristics.

26. In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*,¹ the Full High Court stated:

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. 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.

27. Amounts that are periodical, regular or recurrent, relied upon by the recipient for their regular expenditure and paid to them for that purpose are likely to be ordinary income, as are amounts that are the product in a real sense of any employment of, or services rendered by, the recipient.² Amounts paid in substitution for salary or wages foregone or lost may also be ordinary income.³

¹ (1990) 170 CLR 124 at 138; 90 ATC 4413 at 4420; (1990) 21 ATR 1 at 7.

² *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392.

³ *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568; (1952) 10 ATD 82 at 92; (1952) 5 AITR 443 at 456 (per Fullagar J).

28. Ultimately, whether or not a particular receipt is ordinary income depends on its character in the hands of the recipient.⁴ The whole of the circumstances must be considered⁵ and the motive of the payer may be relevant to this consideration.⁶

29. Fortnightly stipend payments received by a student are considered to be ordinary income, being periodical receipts that are expected and relied upon by the student.

30. The educational allowance is a reimbursement of the student's actual expenses and not an allowance, as explained by Taxation Ruling TR 92/15⁷ which deals with the distinction between an allowance and a reimbursement for income tax and fringe benefits tax purposes:

A payment is a reimbursement when the recipient is compensated exactly (meaning precisely, as opposed to approximately), whether wholly or partly, for an expense already incurred although not necessarily disbursed. In general, the provider considers the expense to be its own and the recipient incurs the expenditure on behalf of the provider.

31. It is considered that the educational allowance to attend conferences or training sessions integral to the Program is not assessable as ordinary income as it does not satisfy the criteria for ordinary income. The payments are a direct reimbursement of expenses incurred as part of the education course which are not the product of any employment or services rendered and not ordinary income in the hands of the student.

Statutory income

32. 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.

33. Section 10-5 lists provisions about statutory income and included in this list is section 15-2.

34. Section 15-2 includes in a taxpayer's assessable income the value of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to the taxpayer 'in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by' the taxpayer.

⁴ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 526; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 375; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55; (1956) 11 ATD 68 at 73; (1956) 6 AITR 248 at 254; *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375 at 402; 77 ATC 4255 at 4273; (1977) 7 ATR 519 at 539.

⁵ *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627-628 per Kitto J.

⁶ *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527, 528; (1966) 14 ATD 286 at 293; (1966) 10 AITR 367 at 376.

⁷ Income tax and fringe benefits tax: the difference between an allowance and a reimbursement

35. The educational allowance is not provided to the student as an employee. Nor is it provided 'in respect of, or for or in relation directly or indirectly to' any services rendered by the student, as there is no element of reward in the educational allowance for any services the student might provide to the Veterinary Hospital as an intern.⁸ The educational allowance is paid solely to support the student's professional education and development in matters integral to the Program. Any amounts the student receives in reimbursement of costs incurred in attending conferences and training sessions are therefore not assessable income under section 15-2.

Exempt income

36. Subsection 6-20(1) 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.

37. Amounts of ordinary income and statutory income are exempt from income tax under section 51-1 if the amount is of a type listed in the tables in Division 51, subject to any exception or special condition.

38. Item 2.1A in the table in section 51-10 provides that payments are exempt from income tax if:

- (a) they are made to a full-time student at a school, college or university;
- (b) they are made by way of a scholarship, bursary, educational allowance or educational assistance; and
- (c) they are not subject to the exceptions set out in section 51-35.

39. As the fortnightly stipend payments are ordinary income, it must be established whether or not they are exempt income under Division 51. This requires a consideration of these three conditions.

40. The educational allowance is neither ordinary nor statutory income and it is unnecessary to consider whether these payments are exempt.

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

41. In these circumstances, it is accepted that the Scholarship students undertaking the full-time Program at the University satisfy this criteria.

⁸ *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274.

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

42. The words 'scholarship, bursary, educational allowance or educational assistance' are not defined in the ITAA 1997. The *Macquarie Dictionary*, 1991, 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'.

43. Paragraphs 34 to 48 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...'.⁹

44. 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;⁹ and
- the education of the recipient is at least one purpose for which the scholarship is provided.¹⁰

45. To be awarded a Scholarship, students have to undertake a competitive selection process which involves them being assessed against a range of criteria such as their academic achievements and interpersonal skills. As such, it is accepted that selection for the Scholarship is merit based.

46. In *Chesterman v. Federal Commissioner of Taxation*¹¹ Isaacs J said that for purposes to be educational they must provide for the giving or imparting of instruction.

47. The Scholarship is paid to a student enrolled in the Program and the purpose of this Program is to enable graduate veterinarians to be trained in both clinical research and clinical skills. It is accepted that the Scholarship has the requisite educational purpose.

48. Accordingly, it is accepted that payments made under the Scholarship are made by way of 'a scholarship, bursary, educational allowance or educational assistance'.

⁹ *Re Leitch (deceased)* [1965] VR 204.

¹⁰ *Federal Commissioner of Taxation v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450.

¹¹ (1923) 32 CLR 362 (at 385-6).

Do the exceptions in section 51-35 apply?

49. Section 51-35 excludes the following payments from exemption:

- payments by the Commonwealth for education or training: paragraphs 51-35(a), 51-35(b) and 51-35(f);
- payments made on the condition that the student will (or will if required) become an employee of the payer: paragraph 51-35(c);
- payments made on the condition that the student will (or will if required) enter into a contract with the payer that is wholly or principally for the labour of the student: paragraph 51-35(d); and
- payments made under a scholarship that is not provided principally for educational purposes: paragraph 51-35(e).

Are the payments Commonwealth education or training payments?

50. The payments made under the Scholarship are not of a kind covered by paragraphs 51-35(a), 51-35(b) or 51-35(f).

Are the payments made on the condition that the student will (or will if required) become or continue to be an employee of the payer?

51. Paragraph 51-35(c) excludes payments from exemption if they represent:

a payment by an entity or authority on the condition that the student will (or will if required) become, or continue to be, an employee of the entity or authority.

52. The Federal Court has taken 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.¹² It was held that the exemption did not apply where, as a matter of ordinary language, it could be said that the receipt of the scholarship amount was conditional on the recipient working with the payer if the payer so required.

53. Under the Program, students are required to undertake evaluation and treatment of referred animal patients at the Veterinary Hospital. This work is an integral part of the Program.

54. The terms of the Scholarship put the student under no obligation (whether or not legally binding) to become an employee of the University in the future, or to do so if required.

¹² *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; (1989) 90 ALR 533; 89 ATC 5322; (1989) 20 ATR 1652.

55. The payments under the Program are therefore not excluded from exemption under paragraph 51-35(c).

Are the payments made on the condition that the student will (or will if required) enter into, or continue to be a party to, a contract with the payer that is wholly or principally for the labour of the student?

56. Paragraph 51-35(d) excludes payments from exemption if they represent:

a payment by an entity or 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 entity or authority that is wholly or principally for the labour of the student.

57. Paragraph 51-35(d) imposes a similar requirement to that of paragraph 51-35(c) by excluding employment-like relationships, that is, contracts wholly or principally for labour.

58. It is recognised that work performed for an organisation can be part of an education program.¹³

59. In circumstances where work is carried out solely or primarily for an educational purpose and its results are not calculated to benefit the organisation but are incidental products of the study program, there is no contract wholly or principally for the labour of the student.

60. The case work undertaken by the student at the Veterinary Hospital is a requirement of the Program. The terms of the Scholarship put the student under no obligation (whether or not legally binding) to enter into a contract wholly or principally for the student's labour in the future, or to do so if required.

61. The payments under the program are therefore not excluded from exemption under paragraph 51-35(d).

Are the scholarships provided principally for educational purposes?

62. The Scholarships are awarded to a student to enable them to complete the Program at the University.

63. It is accepted that in providing the Scholarships the University is doing so principally for educational purposes. The Scholarship payments are therefore not excluded from exemption by paragraph 51-35(e).

Conclusion

64. Accordingly, the fortnightly stipend payments made to a student are exempt under item 2.1A of the table in section 51-10.

¹³ *Federal Commissioner of Taxation v. Hall* 75 ATC 4156 at 4164 and 4162.

Appendix 2 – Detailed contents list

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References

Previous draft:

Not previously issued as a draft

Related Rulings/Determinations:

TR 92/15; TR 93/39; TR 2006/10

Subject references:

- exempt income
- scholarships, fellowships & bursaries

Legislative references:

- ITAA 1936 23(z)
- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-10
- ITAA 1997 6-20(1)
- ITAA 1997 10-5
- ITAA 1997 15-2
- 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)
- TAA 1953
- Copyright Act 1968

Case references:

- *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362
- *Federal Coke Co Pty Ltd v. Federal Commissioner of Taxation* (1977) 34 FLR 375; 77 ATC 4255; (1977) 7 ATR 519
- *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82; (1952) 5 ATR 443

- *Federal Commissioner of Taxation v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450
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- *Federal Commissioner of Taxation v. Rowe* (1995) 60 FCR 99; 95 ATC 4691; (1995) 31 ATR 392
- *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation* (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 ATR 248
- *Re Leitch (deceased)* [1965] VR 204
- *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 ATR 367
- *Smith v. Federal Commissioner of Taxation* (1987) 164 CLR 513; 87 ATC 4883; (1987) 19 ATR 274
- *Squatting Investment Company Limited v. Federal Commissioner of Taxation* (1953) 86 CLR 570

Other references:

- *The Macquarie Dictionary*, 1991, 2nd revised Edition

ATO references

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