


CR 2002/63 - Income tax: Australian Coal Association Research Program Scholarships

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Class Ruling

Income Tax: Australian Coal Association Research Program Scholarships

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Preamble

*The number, subject heading, and the **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

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 law(s) dealt with in this Ruling are sections 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 full time, post-graduate students who obtain an Australian Coal Association Research Program (ACARP) Scholarship.

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 below at paragraphs 9 to 16 in this Ruling.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling:
- (a) 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
 - (b) this Ruling may be withdrawn or modified.
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Date of effect

8. This Ruling applies from 1 July 2002. 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 (see paragraphs 21 to 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- it is not later withdrawn by notice in the Gazette; or
 - it is not taken to be withdrawn by an inconsistent later public Ruling; or
 - the relevant tax laws are not amended.

Arrangement

9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents:
- application for Class Ruling dated 17 June 2002; and
 - correspondence from ACARP dated 15 July 2002.

These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description.

10. The ACARP intends to make scholarships available to individuals who have been working in the coal industry or a closely related industry, such as power generation, for a minimum of 3 years and wish to upgrade their education by returning to post-graduate studies.

11. The scholarships are to be awarded within the framework of the ACARP which is an industry collaborative research program funded by a levy on black coal production in Australia. Australian Coal Research Ltd (ACR) is the corporate entity established to manage all aspects of the ACARP and in this capacity will be the contracting authority issuing the scholarship and responsible for payments to recipients.

12. The scholarship program will be undertaken as part of a two year full time Masters or three year PhD degree course at an Australian university. The proposed work is expected to advance the knowledge base of the Australian black coal industry within the ACARP framework.

13. Initially it is expected that two scholarships will be awarded annually, with a third being awarded in exceptional circumstances. The scholarship amounts, which may vary, will be paid to the relevant universities which will then make payments to the students on a monthly basis for the duration of the courses.

14. Selection for the scholarships will be by a committee comprising industry personnel and involve an assessment of applications against the merits of both the candidate and the proposed research program.

15. Preference in the awarding of the scholarships will be given to applicants who are expected to return to the coal industry or a closely related industry once their studies have been completed. However it will not be a condition of receipt of the scholarship that the holder returns to a prior employer or takes up employment with a new employer at the conclusion of the studies. Nor will there be any terms or conditions imposed on scholarship recipients that require or suggest a duty of service with ACARP or members of the industry. While scholarship holders may enter into formal or informal arrangements with future employers in the industry, ACR will not be a party to any such arrangements.

16. Where it is considered that it would enhance the academic value and/or relevance of the studies to Australia's coal industry, ACR will enter into agreements with leading research organisations so that the scholarship holders can use the facilities and benefit from the academic supervision of senior researchers of those organisations.

Ruling

17. Payments made under the ACARP Scholarships will be exempt income under Item 2.1A, section 51-10 of the ITAA 1997.

Explanations

18. Item 2.1A of the table in section 51-10 of the ITAA 1997 provides an income tax exemption in relation to payments:

- to a full-time student at a school, college or university;
- made by way of a scholarship, bursary, educational allowance or educational assistance;
- subject to the exceptions set out in section 51-35 of the ITAA.

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

19. Yes. The scholarships will only be provided to full-time post-graduate students enrolled at an Australian university.

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

20. The words 'scholarship, bursary, educational allowance or educational assistance' are not defined in Division 51 of 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' is defined as 'a student; who, because of merit, etc., is granted money or other aid to pursue ... studies'.

21. 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*. 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'.

22. 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) 75 ATC 4156).

23. The selection process will involve an assessment of applications against the candidate's experience in the industry, their competence to undertake the study and the significance or merit of the proposed research program. It is accepted that applicants for the scholarships will be subject to a competitive process and that the scholarships will be granted on merit.

24. ACARP will provide the scholarships for the purpose of providing an opportunity to eligible candidates to undertake post-graduate studies and gain a post-graduate university degree. There is an educational purpose behind the provision of the scholarships. The payments will therefore be made by way of a scholarship, bursary, educational allowance or educational assistance.

Do the exceptions in section 51-35 apply?

25. 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);
- 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); 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?

26. Paragraph 51-35(a) excludes from exemption Commonwealth payments for assistance for secondary education or in connection with the education of isolated children. The scholarship payments are not payments of this kind.

27. Paragraph 51-35(b) excludes from exemption Commonwealth education or training payments, as defined in section 52-145. The scholarship payments are not payments of this kind.

28. Paragraph 51-35(f) excludes from exemption scholarship payments that are education entry payments under Part 2.13A of the *Social Security Act 1991*. The scholarship payments are not payments of this kind.

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?

29. Paragraphs 51-35(c) and (d) of the ITAA 1997 specifically state that payments are not exempt from income tax 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.

30. Under the terms of this arrangement, while preference will be given to applicants who are expected to return to the coal or closely related industry following completion of the studies, there is no requirement that recipients of the scholarships continue or enter employment with the payer of the scholarships. Also there are no conditions attaching to the scholarships that require or suggest a duty of service or represent the entering into a contract of labour by the scholarship holder.

Are the scholarships provided principally for educational purposes?

31. The scholarships will only be provided to students who are engaged in a full time, post-graduate course with an Australian university in order to gain a Masters or PhD degree qualification.

32. The research activities will be assessed by the university as part of the student's ongoing course of post-graduate study.

33. The payments made under the terms of this arrangement will not be excluded from exemption by paragraph 51-35(e) of the ITAA 1997.

Conclusion

34. None of the exceptions in Section 51-35 apply to the scholarship payments made under the terms of this arrangement.

Detailed contents list

35. Below is a detailed contents list for this Class Ruling:

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Commissioner of Taxation

 04 September 2002

<i>Previous draft:</i>	- ITAA 1936 23(z)
Not previously released in draft form	- ITAA 1997 Div 51
	- ITAA 1997 51-1
<i>Related Rulings/Determinations:</i>	- ITAA 1997 51-5
TR 92/1; TR 92/20; TR 93/39;	- ITAA 1997 51-10
TR 97/16; CR 2001/1	- ITAA 1997 51-35
	- ITAA 1997 51-35(a)
	- ITAA 1997 51-35(b)
<i>Subject references:</i>	- ITAA 1997 51-35(c)
- exempt income	- ITAA 1997 51-35(d)
- post graduate research	- ITAA 1997 51-35(e)
- scholarships	- ITAA 1997 51-35(f)
	- ITAA 1997 52-145
<i>Legislative references:</i>	- Social Security Act 1991 2.13A
- TAA 1953 Part IVAAA	- Copyright Act 1968

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Case references:

- *FC of T v. Hall*; (1975) 6 ALR 457; (1975) 75 ATC 4156; (1975) 5 ATR 450
 - *Re Leitch, deceased*; 1965 VR 204
 - *FC of T v. Ranson*; (1989) 86 ALR 267; 89 ATC 4353; (1989) 20 ATR 488
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