



CR 2002/66W - Income tax: Allowable deduction: tuition fees paid by certain Royal Melbourne Institute of Technology ('RMIT') students

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 This document has changed over time. This is a consolidated version of the ruling which was published on *1 July 2001*



Class Ruling

Income Tax: Allowable deduction: tuition fees paid by certain Royal Melbourne Institute of Technology ('RMIT') students

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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 dealt with in this ruling is section 8-1 of the *Income Tax Assessment Act 1997* ('ITAA 1997').

Class of persons

3. The class of persons to which this Ruling applies is Higher Education students who have enrolled in RMIT courses conducted during the period November 2001 to February 2002 ('the RMIT 2001 Summer School') or during the period February 2002 to June 2002 ('Semester 1 2002') and students who have enrolled in RMIT Vocational Education courses ('RMIT Vocational Education students') conducted during the period November 2001 to June 2002, and:

- (i) who had not withdrawn from their course(s) by the census date;

- (ii) whose fees were not invoiced to them by Royal Melbourne Institute of Technology ('RMIT') on or before 30 June 2002; and
- (iii) who had not paid their fees in respect of their course(s) on or before 30 June 2002.

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 17 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 for the year ended 30 June 2002.

Arrangement

- 9. The arrangement that is the subject of this Ruling is described below. The description is based on the application for class ruling

dated 10 July 2002. That document or relevant parts of it form part of and are to be read with this description.

10. RMIT students enrolled in the RMIT 2001 Summer School or Semester 1 2002 courses have agreed to RMIT's terms and conditions (or Statutory regulations for Vocational Education students) by signing an enrolment form.

11. Under the RMIT enrolment terms and conditions, RMIT Higher Education students are entitled to cancel their enrolment or withdraw from the nominated subjects prior to the census date (31 March 2002 in respect of both the RMIT 2001 Summer School and Semester 1 2002). In such a case, RMIT will refund any tuition fees paid or, if the students have not paid their tuition fees as at the census date, the liability to pay the fees is cancelled.

12. In addition to the RMIT enrolment terms and conditions above, RMIT Vocational Education student tuition fees are payable within 28 days of the enrolment date. If Vocational Education students withdraw from their course prior to the census date then the tuition fee is also waived or refunded as the case may be.

13. Accordingly RMIT is entitled to begin recovery of the tuition fees from a Higher Education student at any time after the census date and from a Vocational Education student at any time after the census date or 28 days after the student's enrolment date, whichever is the later ('the relevant date').

14. In the event that the student cancels his or her enrolment or withdraws from the course after the census date, his or her liability to pay the tuition fees remains on foot and legally recoverable by RMIT. RMIT's right to begin recovery of the fees is not dependent upon it issuing an invoice to the student. It may begin recovery of the fees owed at any time after the relevant date regardless of whether or not an invoice has or has not yet been issued to the student.

15. The relevant date for all students comprising the class of taxpayers to whom this Class Ruling applies fell within the period 1 April 2002 and 30 June 2002.

16. RMIT implemented a new 'online' student management system termed the 'Academic Management System' or 'AMS'. That system manages all aspects of student administration and went live in October 2001. Since going live the system has been unable to issue invoices to some students. The fees, which are the subject of the ruling, are in respect of students enrolled in the RMIT 2001 Summer School or in Semester 1 2002.

17. As a consequence certain students had not been invoiced for their tuition fees by 30 June 2002 and had also not paid them by that date. Students affected include post-graduate students, part-time

undergraduate students and students enrolled in Vocational Education Courses.

Ruling

18. RMIT students who are members of the class of persons to which this Ruling applies and who have not paid tuition fees in respect of the RMIT 2001 Summer School or Semester 1 2002 on or before 30 June 2002 have incurred the loss or outgoing in respect of these tuition fees in the year ended 30 June 2002 for the purposes of section 8-1 of ITAA 1997. Therefore, those students who satisfy the remaining requirements of section 8-1 of the ITAA 1997 can claim a deduction (for work/business expenses) for the year ended 30 June 2002.

Explanations

Incurred

19. There is no statutory definition of the term incurred. However the Commissioner has issued Taxation Ruling TR 97/7 dealing with the meaning of 'incurred' for the purposes of section 8-1 of ITAA 1997.

20. That ruling sets out some general rules, as settled by case law, to assist in determining whether and when a loss or outgoing has been incurred:

- (a) a taxpayer need not actually have paid any money to have incurred an outgoing provided the taxpayer is definitively committed in the year of income. Accordingly, a loss or outgoing may be incurred within subsection 51(1) even though it remains unpaid, provided the taxpayer is 'completely subjected' to the loss or outgoing. That is, subject to the principles set out below, it is not sufficient if the liability is merely contingent or no more than pending, threatened or expected, no matter how certain it is in the year of income that the loss or outgoing will be incurred in the future. It must be a presently existing liability to pay a pecuniary sum;
- (b) a taxpayer may have a presently existing liability, even though the liability may be defeasible by others;
- (c) a taxpayer may have a presently existing liability, even though the amount of the liability cannot be precisely

ascertained, provided it is capable of reasonable estimation (based on probabilities);

- (d) whether there is a presently existing liability is a legal question in each case, having regard to the circumstances under which the liability is claimed to arise;
- (e) in the case of a payment made in the absence of a presently existing liability (where the money ceases to be the taxpayer's funds) the expense is incurred when the money is paid.

21. The Commissioner considers that RMIT students who are members of the class of persons to which this Ruling applies and who have not paid tuition fees in respect of the RMIT 2001 Summer School or Semester 1 2002 on or before 30 June 2002 had a presently existing liability on or before 30 June 2002 in respect of these tuition fees for the following reasons:

- the students had not cancelled their enrolment prior to the census date and are therefore bound by RMIT's enrolment terms;
- the RMIT Summer School and Semester 1 2002 courses were completed prior to 30 June 2002 and therefore the entirety of RMIT's teaching services, which are the subject of the fees, were provided prior to the year ended 30 June 2002.

22. Accordingly, the students referred to in paragraph 18 above have incurred the relevant tuition fees during the year ended 30 June 2002.

Detailed contents list

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

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Commissioner of Taxation

4 September 2002

Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

CR 2001/1; TR 92/1; TR 97/7;
TR97/16

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1997 8-1
- ITAA 1997 51(1)
- Copyright Act 1968

ATO References

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