


# ***CR 2002/72 - Income tax: University of Melbourne - Externally Funded Research Project Scholarships***

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## Class Ruling

### Income tax: University of Melbourne – Externally Funded Research Project 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**

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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 laws 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 post-graduate students who obtain an Externally Funded Research Project Scholarship from the University of Melbourne (the University).

#### **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 of 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  - (b) this Ruling may be withdrawn or modified.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

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8. This Ruling applies to the years of income commencing both before and after its date of issue. 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

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9. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents. These documents, or relevant parts of them, as the case may be, form part of and are to be read with this description. The relevant documents or parts of documents incorporated into this description of the arrangement are:

- Application for Class Ruling dated 17 April 2002;
- Correspondence from the University dated 15 July 2002.

10. The University provides Externally Funded Research Project Scholarships (the Scholarships), which are sometimes also referred to as studentships, to students who are enrolled with the University on a full time basis in research post-graduate degree courses.

11. The University receives funding for the Scholarships from various external organisations or sponsors, including not-for-profit bodies, government and industry organisations. The purposes of the sponsors range from wishing to promote research in a certain area to being interested in results of research.

12. Under a contractual agreement the sponsor agrees to provide funding for payment of a Scholarship to enable a student to undertake research as part of the post-graduate degree. The University agrees to supervise the student in carrying out the research project and to provide various reports to the sponsor as required. The Scholarship amount depends on the sponsor's level of funding and is paid for the duration of the degree course.

13. The research topic in the agreement can range from a broad area of research to a specific topic. In all cases the student's actual research topic must be approved by the University as meeting the academic standard for the degrees and the research activities are assessed as part of the on-going course of post-graduate study. Awarding of the Scholarship to the student is conditional on the high scholastic standard of their research.

14. Selection of all the students is based on merit and from a pool of eligible candidates who have met the University selection criteria based on academic achievement. Sponsors may participate in the selection process but in most cases do not.

15. As a condition of funding, in some cases the sponsor may require the University to share or provide the rights to any intellectual property that may be created as a result of the research. Students wishing to participate in these projects are required to assign the rights to the intellectual property to the University to enable the University to fulfil its obligations to the sponsors. Assigning the rights is not a condition of enrolment with the University and where the student chooses not to do so the University is obliged to find that student another research study project.

16. Students are not required to engage in employment with the University or sponsor during or after the research project. In some cases the University allows the students to undertake research at their sponsor's premises which permits the sponsor to be involved in supervision of the students. The students however receive no payment

from the sponsor. Some students may be employed part-time by the University but the employment is not related to receipt of the Scholarship. The University considers that payments in respect of part-time employment are salary or wages and withholds PAYG tax under subdivision 12-B of Schedule 1 to the *Taxation Administration Act 1953*.

## Ruling

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17. Payments made under the University of Melbourne Externally Funded Research Project Scholarships will be exempt income under Item 2.1A of section 51-10 of the ITAA 1997.

## Explanations

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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; or
- subject to the exceptions set out in section 51-35 of the ITAA 1997.

### **Are the Scholarship holders full-time students at a school, college or university?**

19. Yes. The Scholarships are only provided to full-time post-graduate students enrolled at the 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 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' 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. In all cases the student is selected from the pool of eligible candidates who have met the University selection criteria based on academic achievement. It is accepted that applicants for the Scholarships are subject to a competitive process and that the Scholarships are granted on merit.

24. The University provides the Scholarships to students to undertake research as part of their post-graduate degrees. There is an educational purpose behind the provision of the Scholarships. The payments are therefore 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 exclude payments from exemption 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.

Under the terms of the arrangement the Scholarship holders are not required to be, or become, employees of the University or any sponsor. They also have no right or expectation of future employment with the University or any sponsor. Some Scholarship holders may hold some part-time employment with the University but this is not related to the receipt of the Scholarship.

30. In certain cases the Scholarship holder may be required to assign to the University any rights to the intellectual property created by the Scholarship holder's research. This is to enable the University to fulfil its obligations in circumstances where the sponsor, as a funding condition, requires the University to share or assign such rights. Any rights created ultimately therefore become the property of the sponsor. This requirement is not considered to give rise to a contract with the University that is wholly or principally for the labour of the student. Rather the arrangement is to enable funding to be obtained by the University to provide educational opportunities for the student.

31. The Scholarship holders do not enter into and are not required to enter into an employment contract or a contract for labour with either the University or the sponsor.

***Are the Scholarships provided principally for educational purposes?***

32. The Scholarships are only provided to students who are enrolled in full time research post-graduate degree courses with the University.

33. In all cases the Scholarship holder's actual research topic must be approved by the University as meeting its academic standards for the degree course and the research activities are assessed by the University as part of the ongoing course of post graduate study.

34. The payments must be principally for educational purposes. That the University may be required to share or provide rights to any intellectual property created as a result of the research does not in itself prevent the Scholarship being principally for the education of the student. The information provided by the University indicates that its principal purpose is the education of the student via the means of a research post-graduate degree course. The funds made available by the external organisations or sponsors assist the University to achieve its principal educational purpose.

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

***Conclusion***

36. None of the exclusions in section 51-35 apply to the Scholarship payments.

**Detailed contents list**

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

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**Commissioner of Taxation**

18 September 2002

<i>Previous draft:</i>	- ITAA 1997 51-35
Not previously released in draft form	- ITAA 1997 51-35(a)
	- ITAA 1997 51-35(b)
	- ITAA 1997 51-35(c)
<i>Related Rulings/Determinations:</i>	- ITAA 1997 51-35(d)
TR 92/1; TR 92/20; TR 93/39	- ITAA 1997 51-35(e)
TR 97/16; CR 2001/1	- ITAA 1997 51-35(f)
	- ITAA 1997 52-145
<i>Subject references:</i>	- Taxation Administration Act 1953
- exempt income	- Social Security Act 1991 2.13A
- post graduate research	- Copyright Act 1968
- scholarships	
	<i>Case references:</i>
<i>Legislative references:</i>	- <i>FC of T v. Hall</i> , (1975) 6 ALR 457,
- TAA 1953 Part IVAAA	(1975) 75 ATC 4156,(1975) 5 ATR
- TAA 1953 SubDiv12B-1	450
- ITAA 1936 23(z)	- <i>Re Leitch, deceased</i> , 1965 VR 204
- ITAA 1997 Div 51	
- ITAA 1997 51-1	
- ITAA 1997 51-10	

ATO References

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