


CR 2002/77 - Income tax: Victoria University of Technology - leadership and citizenship bursary payments to elected student representatives

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Class Ruling

Income tax: Victoria University of Technology - leadership and citizenship bursary payments to elected student representatives

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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 6-5 of the *Income Tax Assessment Act 1997* ('ITAA 1997').

Class of persons

3. The class of persons to whom this Ruling applies is elected student representatives of the Victoria University Students Union ('VUSU') who receive bursary payments from the Victorian University of Technology in their role as student union office bearers.

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 10 to 12 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 - (b) this Ruling may be withdrawn or modified.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 Class Ruling applies to 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 Class Ruling only applies to the extent that:

- it is not later withdrawn by notice in the *Gazette*;
- 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.

10. The student president and various other elected student representatives of the Executive Committee of the VUSU receive a

monthly payment to support their role in university governance. A Bursary Review Panel assesses the first payment of the President and Executive Committee members after a performance indicator (attending induction) has been met.

11. The Bursary Review Panel then reviews the representatives' performance every 3 months. There are certain duties and performance indicators which the representatives must satisfy in order to receive their monthly payment (for example, providing written reports, keeping a diary and, in the case of the president, acting as Chairperson of the Executive Committee meeting). Representatives do not enter into any form of agreement or contract with the University in their role as elected student representatives.

12. The student representatives are members of the VUSU. They are paid the bursary by University Council which is a separate organisation from the VUSU.

Ruling

13. Monthly payments to the VUSU student representatives are assessable income.

Explanations

14. A payment or other benefit received is assessable income if it is:

- income in the ordinary sense of the word (*ordinary income*); or
- an amount of benefit that through the operation of the provisions of the tax law is included in assessable income (*statutory income*).

Ordinary income

15. Under subsection 6-5(1) of the ITAA 1997 an amount is assessable income if it is income according to ordinary concepts (ordinary income).

16. In determining whether an amount is ordinary income, the courts have established the following principles:

- whether receipts ought to be treated as income must be determined in accordance with the ordinary concepts

and usages of mankind, except in so far as a statute dictates otherwise¹;

- whether the payment received is income depends upon a close examination of all relevant circumstances; and
- whether the payment received is income is an objective test.

17. Relevant factors in determining whether an amount is ordinary income include:

- whether the payment is the product of any employment, services rendered, or any business;
- the quality or character of the payment in the hands of the recipient;
- the form of the receipt, that is, whether it is received as a lump sum or has an element of periodicity, recurrence or regularity; and
- the motive of the person making the payment.

18. In this case, the payments to the student representatives have characteristics that are consistent with the payments being income according to ordinary concepts. For instance, the payments are made in relation to each representative's specific office, and there is an expectation that the payments will be forthcoming once the duties and performance indicators have been satisfactorily assessed by the Bursary Review Panel. The payments also have an element of periodicity and regularity.

Additional Information

19. Although the bursary payments are assessable income for the student representatives there are no withholding obligations for the University Council under Subdivision 12B, Schedule 1, of the *Taxation Administration Act 1953*.

Detailed contents list

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

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¹ [Jordan CJ of the Supreme Court of NSW in *Scott v Commissioner of Taxation \(NSW\)* \(1935\) 35 SR\(NSW\) 215 at 219.](#)

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Commissioner of Taxation

 23 October 2002

Previous draft:

Not previously released in draft form

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*Related Rulings/Determinations:*CR 2001/1; TR 92/1; TR 92/20;
TR 97/16*Legislative references:*

- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- TAA 1953 Part IVAAA
- TAA 1953 12-35 of Sch 1
- TAA 1953 12B of Sch 1
- Copyright Act 1968

Subject references:

- allowances
- assessable income
- bursaries

ATO References

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