


CR 2003/26 - Income tax: CSIRO funded Studentships and Scholarships

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Class Ruling

Income tax: CSIRO funded Studentships and 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 laws dealt with in this Ruling are sections 6-5, 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 University students in receipt of wholly funded Studentships or Scholarships with the Commonwealth Scientific & Industrial Research Organisation ('CSIRO'). In this ruling, the words 'Studentships or Scholarships' may be jointly referred to as 'Awards' and persons receiving Studentships or Scholarships may be referred to as 'Award recipients'.

4. The CSIRO may be the host organisation for awards either partially or wholly funded by other sponsors. Such awards may contain conditions different to those associated with Awards wholly funded by the CSIRO and therefore are outside the scope of this Class Ruling. If there is a Class Ruling concerning the award funded wholly or partly by another sponsor, that other Class Ruling is the Commissioner's opinion of the way in which the tax law(s) apply.

Qualifications

5. The Commissioner makes this Ruling based on the precise arrangement identified in this Ruling.
6. 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 20 in this Ruling.
7. 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

9. This 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 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

10. 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:

- a. E-mailed application for a Class Ruling dated 14 May 2002;
- b. The 10 May 2002 version of the conditions of award for the CSIRO Livestock Industries PhD Scholarship;
- c. CSIRO Personnel Management Manual:
 - Part 2.6 Postgraduate Studentships;
 - Appendix 2.6A - Stipends and Allowances for CSIRO Postgraduate Students;
 - Appendix 2.6B - Sample advertisements for Postgraduate Studentships; and
 - Document 17.2.1 - letter advising changes to Workers' Compensation coverage.
- d. Letter dated 10 September 1998 from the Commissioner of Taxation to the CSIRO on the subject: CSIRO Postgraduate Studentships;
- e. Various other documents that had been submitted with applications for Private Binding Rulings lodged by Award recipients. These documents outline the differing conditions attached to the award of Studentships and Scholarships granted by a range of CSIRO Divisions, including CSIRO Sustainable Ecosystems, CSIRO Land and Water, CSIRO Livestock Industries, CSIRO Entomology, and CSIRO Plant Industry.

11. Under subsection 9(1) of the *Science and Industry Research Act 1949* ('the SIR Act'), the CSIRO is obliged to award studentships and to make grants for the purpose of encouraging scientific research. To meet this requirement, it awards a number of postgraduate Studentships and Scholarships each year to students undertaking full-time PhD or Masters programs in science at Australian universities.

12. The CSIRO currently funds two different categories of awards:
- CSIRO Postgraduate Studentships ('Studentships'); and
 - CSIRO Postgraduate Scholarships ('Scholarships').
13. In the case of both Studentships and Scholarships, there is no requirement that the student do any specific work for the CSIRO and no commitment of employment with the CSIRO either during the course of the award period or after its conclusion. Nor does payment of an Award make the recipients employees of the CSIRO. However, recipients will be covered by the CSIRO under its workers compensation scheme whenever on CSIRO premises. They may also be required to sign confidentiality agreements as a consequence of being granted access to CSIRO premises and facilities.
14. Recipients of an Award are free to publish the results of their research, however, where the results came from research conducted during the award period, they are usually required to give appropriate acknowledgment to the CSIRO.
15. Award recipients will generally have selected the topic of their thesis without direction from the CSIRO. The CSIRO will ordinarily not require title to any Intellectual Property resulting from the PhD/Masters study, although it may reserve the right to receive royalty free access to that Intellectual Property if it was developed or conceived whilst using CSIRO facilities.
16. However, some Studentships will be granted where the subject of the PhD/Masters work is closely connected to areas where the CSIRO is conducting research it regards as being of prime commercial significance, and assignment of Intellectual Property will be required from recipients involved with such research.
17. The CSIRO will appoint a supervisor to assist with the completion of the PhD/Masters program. It will not be unusual for both the CSIRO and the University at which the student is enrolled to both appoint supervisors, particularly in the case of Scholarship holders. An annual report outlining progress towards completion of the PhD/Masters is normally submitted to the supervisor, as is a copy of the thesis eventually produced.

Studentships

18. Recipients of CSIRO Postgraduate Studentships can receive the following types of financial assistance under their award:
- A stipend for the two to three year period required to complete the PhD/Masters;
 - Payment of all compulsory university fees, including HECS;

- A thesis allowance;
- A relocation allowance; and
- Maintenance and travelling allowances.

19. The stipend currently paid is in the region of \$25,000 per annum, with payment being made on a fortnightly basis.

Scholarships

20. Recipients of CSIRO Postgraduate Scholarships must, as a condition of their entitlement to the Scholarship, be in receipt of an Australian Postgraduate Award ('APA') or its equivalent. The Scholarship will be paid for the period of the APA and effectively supplements it. The types of financial assistance available to Scholarship holders includes:

- An allowance, currently in the region of \$7,000 per annum;
- An amount of \$4,000 per annum to cover necessary (local) travel and other costs associated with completing the PhD/Masters; and
- An amount of \$6,000 to cover the costs of international travel to conferences or laboratories within the two to three year period of the Scholarship.

Ruling

21. The payments made under wholly CSIRO funded Studentships or Scholarships are considered ordinary income under subsection 6-5(1) of the ITAA 1997. However, these payments will be exempt income under Item 2.1A, section 51-10 of the ITAA 1997 where received by full-time University students.

Explanations

22. Subsection 6-5(1) of the ITAA 1997 provides that an amount is included in assessable income if it is income according to ordinary concepts ('ordinary income').

23. Payments made by the CSIRO for Studentships and Scholarships are considered ordinary income due to the periodic nature of the payments.

24. Section 51-1 of the ITAA 1997 exempts from income tax ordinary income and statutory income covered by tables in sections 51-5 to 51-30.

25. 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 scholarship, bursary, educational allowance or educational assistance; and
- subject to the exceptions set out in section 51-35 of the ITAA 1997.

Are the recipients full-time students at a school, college or university?

26. Eligibility to receive Studentships is generally restricted to persons who are enrolled full-time at a University as PhD/Masters candidates, and who are either citizens of Australia or have permanent residency status. There is an additional condition imposed on Scholarship recipients; they must obtain an APA or its equivalent. Thus, Award recipients will ordinarily be full-time University students. If they are not full-time students, or after receipt of their Award become part-time students, exemption from tax will not apply or will cease, as the case may be.

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

27. 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 '3. the sum of money or other aid granted to a scholar', and 'scholar' as '3. a student; who, because of merit, etc., is granted money or other aid to pursue ... studies'.

28. 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 ('ITAA 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'.

29. In interpreting the meaning of the words ‘scholarship, bursary, education 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) 6 ALR 457, 75 ATC 4156; 5 ATR 450).

30. To obtain a Studentship or Scholarship, recipients are required to submit an application, which is judged against other applicants. Ordinarily, those applicants will not have had any previous association with the CSIRO. It is accepted that applicants for Studentships and Scholarships are subject to a competitive process and are awarded on merit.

31. The Studentships or Scholarships are provided to students to enable them to undertake research as part of their post graduate degrees at an Australian University. There is an educational purpose behind the provisions of the Studentships and Scholarships. The payments are therefore made by way of a scholarship, bursary, education allowance or educational assistance.

Do the exceptions in section 51-35 apply?

32. Section 51-35 of the ITAA 1997 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); or
- payments made under a scholarship that is not provided principally for educational purposes: paragraph 51-35(e).

Is the payment a Commonwealth education or training payment?

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

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

35. 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 Award payments are not payments of this kind.

Is the payment made on the condition that the student enters into employment with, or a contract for labour with, the payer?

36. Paragraphs 51-35(c) and (d) of the ITAA 1997 exclude payments from exemption if they represent:

- (c) a payment by a person or 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 any 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.

37. Awards offered by the CSIRO do not contain conditions that require the recipients to perform specific work for the CSIRO and do not provide any basis for the expectation that employment will be offered at some future date.

38. Coverage of Award recipients by the CSIRO for workers compensation while on CSIRO property is not considered sufficient to make them employees of that organisation. This coverage is simply a precaution by CSIRO against the possibility of incurring an unfunded legal liability should a claimable incident occur to an Award recipient.

39. Award recipients will not be required to enter into any contracts with the CSIRO for their labour. Further, the rights to any Intellectual Property produced during the term of the Award will generally remain with the recipient.

Is the amount provided principally for educational purposes?

40. The Awards are only provided to full-time postgraduate students conducting research at a University for the purposes of obtaining a PhD or Masters Degree.

41. Payment of the Awards is to assist selected students to undertake research studies in the fields of science.

42. The payments must be principally for educational purposes. The CSIRO is providing awards for the purposes of enabling recipients to engage in, and gain experience in research.

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

Conclusion

44. None of the exclusions in section 51-35 apply to wholly CSIRO funded Studentships and Scholarships.

Detailed contents list

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Commissioner of Taxation

26 March 2003

Previous draft:

Not previously released in draft form

Related Rulings/Determinations:

TR 92/1; TR 92/20; TR 93/39;
TR 97/16; CR 2001/1

Subject references:

- Exempt income
- Scholarships
- Post graduate research

- ITAA 1997 51-30
- 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)
- ITAA 1997 52-145
- Science and Industry Research Act 1949 ss 9(1)
- Social Security Act 1991 Pt 2.13A
- Copyright Act 1968

Legislative references:

- TAA 1953 Pt IVAAA
- ITAA 1936 23(z)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 51-1
- ITAA 1997 51-5
- ITAA 1997 51-10

Case references:

- F.C. of T. v. Hall (1975) 6 ALR 457; (1975) 75 ATC 4156; (1975) 5 ATR 450
- Re Leitch, deceased 1965 VR 204

ATO References

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