



CR 2004/138 - Income tax: Endeavour Australia Postgraduate and Postdoctoral Research Fellowships

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Class Ruling

Income tax: Endeavour Australia Postgraduate and Postdoctoral Research Fellowships

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Preamble

*The number, subject heading, **What this Class Ruling is about** (including **Tax law(s)**, **Class of persons** and **Qualifications** sections), **Date of effect**, **Withdrawal**, **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.

Note: This ruling deals only with Australian taxation laws and their application to the arrangement. The taxation consequences of the arrangement in the home countries of those persons to whom this ruling applies will need to be determined by each of those persons in light of any relevant Double Tax Agreement and the domestic tax laws of the home country.

Tax law(s)

2. The tax laws dealt with in this Ruling are sections 6-5, 6-20, 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 postgraduate students and postdoctoral fellows who are awarded an Endeavour Australia Postgraduate and Postdoctoral Research Fellowship by the Department of Education, Science and Training.

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 in paragraphs 11 to 24.

6. If the arrangement actually carried out is materially different from the arrangement that is described in this Ruling, then:

- 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
- this Ruling may be withdrawn or modified.

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Date of effect

8. This Ruling applies from 1 July 2004. 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 and 22 of Taxation Ruling TR 92/20).

9. Furthermore, the 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.

Withdrawal

10. This Class Ruling is withdrawn and ceases to have effect after 30 June 2006. The Ruling continues to apply, in respect of the tax law ruled upon, to all persons within the specified arrangement during the term of the Ruling.

Arrangement

11. The arrangement that is the subject of the Ruling is described below. This description is based on the following documents which are attached to the file record maintained by the Tax Office for this ruling. 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 27 August 2004;
- Facsimile transmission from the applicant dated 12 October 2004; and
- Tax Office record of a telephone conversation between a representative of the applicant and a taxation officer on 15 October 2004.

12. The Department of Education, Science and Training (DEST) intends to award a number of scholarships, known as the Endeavour Australia Postgraduate and Postdoctoral Research Fellowships (the Awards), to provide financial support for postgraduate students and postdoctoral fellows from designated countries to undertake short-term research in Australia in any field of study.

13. The Awards come under DEST's Endeavour Programme which aims to:

- strengthen bilateral ties between Australia and participating countries;
- showcase Australia's education sector to the world;
- strengthen mutual understanding between the people of participating countries;
- further develop Award holder's knowledge and skills in their field of study; and
- create/strengthen linkages between Australian higher education institutions and institutions in participating countries.

14. Up to 23 Awards will be offered, with two being allocated to North America, eight to Latin America, eight to the Middle East and five to Europe. The Award winners are expected to be announced by December 2004 with the Awards to be taken up in the 2005 Australian academic year.

15. The Awards are valued at up to A\$25,000 and the benefits include a travel allowance of A\$5,000, establishment allowance of A\$5,000 and a monthly stipend of A\$2,500 for up to 6 months. The duration of the Award is for 4 to 6 months with payments made on a pro-rata basis.

16. The Award holders must undertake research at an Australian university towards a Masters degree or doctorate degree in the Award holder's home country or postdoctoral research in the scholar's field of expertise.

17. All study and research programmes undertaken by Award students/scholars will be full-time programmes as determined by the host university. Award holders are permitted to undertake part-time employment of up to 20 hours per week in a teaching or research capacity with the host university but must provide written advice from their supervisor stating that the employment will not negatively impact on their study programme.

18. To be eligible for the Awards applicants must be citizens or permanent residents of the designated country and physically resident in that country at the time of application, demonstrate a certain level of fluency in spoken and written English and have at least an undergraduate degree.

19. Applications are first reviewed to determine whether they meet the eligibility requirements. A selection panel then considers eligible applications and makes its recommendations to DEST for final approval.

20. Applications are evaluated against certain selection criteria including:

- a record of high-level academic achievement in the applicant's chosen field of study;
- a well defined study/research programme;
- a proposal that is relevant to the needs and interests of the applicant, Australia and the applicants home country;
- demonstrated progress towards receiving affiliation with an Australian higher education institution;
- a demonstrated association with a higher education institution in the applicant's home country; and
- the applicant's potential to participate at a high level in the academic or wider community in their home country on return from Australia.

21. Receiving an Award is conditional upon the applicant gaining affiliation with an Australian university. Award holders must follow the approved programme of study/research and abide by the rules of the host university. Any changes to their programme or itinerary must have the prior approval of the Scholarships Administrator (the contractor appointed by DEST to administer the Award programme).

22. The Award may be terminated at any time for misconduct, breaches of the conditions of the award or for failure to make satisfactory academic progress. Academic progress will be assessed against academic reports provided by the host institution and the programme outlined in the Award holders application.

23. Award holders are responsible for satisfying the necessary requirements for the issue of a visa for entry into Australia. They are expected to reside in Australia throughout the Award period, obtain prior approval for any overseas visits during that time and must return to their home country on completion of their study/research programmes.

24. It is not a requirement of the Award that the holder performs work for, becomes an employee of or enters into a contract for labour with DEST either during or after the study/research programme. Academic reports from the relevant university are required to be provided to the Scholarship Administrator by the Award holder (see paragraph 22) but no other reports from the scholars are required.

Ruling

25. The payments made as described in paragraph 15 of this Ruling to Award holders undertaking full-time study/research programmes at an Australian university are considered ordinary income and therefore, in principle, assessable income under subsection 6-5(1) of the ITAA 1997. However, these payments will be exempt from income tax under Item 2.1A in the table in section 51-10 of the ITAA 1997.

Explanation

26. A payment or other benefit received by a taxpayer is assessable income if it is:

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

Ordinary income

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

28. 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 periodically; and
- the motive of the person making the payment. Motive, however, is rarely decisive as in many cases a mixture of motives may exist.

29. The payments received by the Award holders are considered to be ordinary income as they are periodical payments and are depended upon by the recipient to meet costs associated with undertaking their studies or to meet their living needs (*Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652).

30. As the payments are considered to be ordinary income, it is not necessary to consider whether they could also be statutory income.

Exempt income

31. Subsection 6-20(1) of the ITAA 1997 provides that an amount of ordinary income or statutory income is exempt income if it is made exempt from income tax by a provision of the ITAA 1997 or another Commonwealth law.

32. Certain amounts of ordinary income and statutory income are exempt from income tax under section 51-1 of the ITAA 1997 if the amount is of a type listed in the tables in Division 51 of the ITAA 1997.

33. Item 2.1A in the table in section 51-10 of the ITAA 1997 provides that payments are exempt from income tax if:

- they are made to a full-time student at a school, college or university;
- they are made by way of scholarship, bursary, educational allowance or educational assistance; and
- they are not subject to the exceptions set out in section 51-35 of the ITAA 1997.

The three conditions are discussed below.

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

34. Yes. All study and research programmes undertaken by the Award students/scholars are full-time programmes as determined by the host university. Some part time work is permitted but only where it does not interfere with or negatively impact on the study programme.

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

35. Yes. 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'. 'Student' is defined as 'one who is engaged in a course of study and instruction at a college, university, or professional or technical school' and 'one who studies a subject systematically or in detail'.

36. 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 paragraph 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...'.

37. In interpreting the meaning of the words 'scholarship, bursary, educational allowance or educational assistance', courts have determined that the 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; (1975) 5 ATR 450) (*Hall's case*).

38. In *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362 (at 385-6) Isaacs J said that for purposes to be educational they must provide for the giving or imparting of instruction. Rath J in *Hall's case* held that research conducted under supervision at a university is institutional in character and therefore educational.

39. There will be a limited number of Awards offered and Award scholars will be selected having regard to written applications. Applications for the Awards are considered initially to determine whether they meet the eligibility requirements and then evaluated by a selection panel against the selection criteria. The selection criteria includes a record of high-level academic achievement, a well defined research programme and a programme that is relevant to the needs and interests of the applicant, Australia and the applicant's home country. The research programmes are undertaken under supervision at a university and will be towards a Masters degree, a doctorate degree or postdoctoral research in the scholar's field of expertise.

40. It is accepted that the applicants for the Awards are subject to a competitive process and that the Awards are granted on merit. There is also an educational purpose in the provision of the Awards. The payments are therefore made by way of a scholarship, bursary, educational allowance or educational assistance.

Do the exceptions in section 51-35 apply?

41. No. 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) of the ITAA 1997;
- 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) of the ITAA 1997; and
- payments made under a scholarship that is not provided principally for educational purposes: paragraph 51-35(e) of the ITAA 1997.

Are the payments Commonwealth education or training payments?

42. No. The payments made under the Awards are not of a kind covered by paragraphs 51-35(a), (b) or (f) of the ITAA 1997.

Are the payments made on the condition that the student will (or will if required) become an employee of or enter into a contract for labour with the payer?

43. No. 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.

44. In *FC of T v. Ranson* (1989) 86 ALR 267; (1989) 89 ATC 4353; (1989) 20 ATR 488, the Federal Court took the view that the words 'upon condition' do not require a contract between the parties to exist or any other form of legal relationship. The Court held that the exemption does not apply where, as a matter of ordinary language, it can be said

that the receipt of the scholarship amount is conditional on the recipient working with the payer if the payer so requires.

45. There is no requirement or obligation for the Award holder to render any service to DEST, the Award provider, whether as an employee or under a contract for labour, either while studying or after completion of the course.

46. Academic reports from the relevant university are required to be provided to the Scholarship Administrator by the Award scholar. The provision of the reports is essentially to determine whether the studies are progressing in such a way as to justify further payments under the Award. The provision of the reports is not considered to constitute a requirement to perform work for the scholarship provider (see Taxation Ruling IT 2581).

Are the Awards provided principally for educational purposes?

47. Yes. It is accepted that the payments made under the terms of the Awards are provided principally for educational purposes and therefore are not excluded from exemption by paragraph 51-35(e) of the ITAA 1997.

Detailed contents list

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

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Commissioner of Taxation

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<i>Previous draft:</i>	- ITAA 1997 51-35(d)
Not previously issued as a draft	- ITAA 1997 51-35(e) - ITAA 1997 51-35(f)
<i>Related Rulings/Determinations:</i>	- Copyright Act 1968 - TAA 1953 Pt IVAAA
CR 2001/1; TR 92/1; TR 92/20; TR 93/39; TR 97/16; IT 2581	
<i>Subject references:</i>	<i>Case references:</i>
- exempt income	- Chesterman v. Federal Commissioner of Taxation (1923) 32 CLR 362
- fellowships	- FC of T v. Hall (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450
- post graduate research	- FC of T v. Ranson (1989) 86 ALR 267; (1989) 89 ATC 4353; (1989) 20 ATR 488
- scholarships	- FC of T v. Ranson (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652
<i>Legislative references:</i>	- Re Leitch, deceased [1965] VR 204
- ITAA 1936 23(z)	
- ITAA 1997 6-5	
- ITAA 1997 6-5(1)	
- ITAA 1997 6-20	
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- ITAA 1997 51-1	
- ITAA 1997 51-10	
- ITAA 1997 51-35	
- ITAA 1997 51-35(a)	
- ITAA 1997 51-35(b)	
- ITAA 1997 51-35(c)	
	<i>Other references:</i>
	- The Macquarie Dictionary, 2nd Revised Edition

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