



CR 2004/92 - Income tax: University of Tasmania - Bachelor of Geomatics Professional Experience Scholarship

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Class Ruling

Income tax: University of Tasmania - Bachelor of Geomatics Professional Experience Scholarship

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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**, **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, 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 are students who receive a scholarship when enrolled for the Professional Experience unit in the University of Tasmania's Bachelor of Geomatics degree course. In this Ruling these persons are referred to as 'students'.

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 10 to 27.

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- this Ruling may be withdrawn or modified.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.

Arrangement

10. The arrangement that is the subject of this Ruling is described below. This description is based on documents provided by the University of Tasmania ('the University') which are attached to the file record maintained by the Australian 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 4 March 2004.
- Written answers to questions asked by an officer of the Australian Taxation Office.

11. This arrangement is called the University of Tasmania Bachelor of Geomatics Professional Experience Scholarship. Scholarships are offered to students in the Bachelor of Geomatics course who enrol for a unit titled Professional Experience.

12. The Bachelor of Geomatics degree requires four years of full-time study, or up to eight years on a part-time basis. Geomatics is a field of science concerned with measurement, management, analysis and visualisation of spatial information describing the Earth's physical features and the built environment. Geomatics includes such disciplines as:

- Land surveying;
- Geographic information systems;
- Remote sensing and photogrammetry;
- Cartography; and
- Geodesy.

13. Students entering the course must meet normal University entrance requirements and have completed two prescribed mathematics and physics units.

14. Graduates find employment as practising land and engineering surveyors, geographic information system consultants and remote sensing specialists. The demand for graduates fluctuates with economic conditions. Typically, they are employed by government departments and mining and surveying companies.

15. In the final year of the Bachelor of Geomatics course all students are required to complete a unit titled Professional Experience. It is a one semester unit and must be completed on a full-time basis.

16. The aim of the Professional Experience unit is to provide students with an opportunity to consolidate their undergraduate education, to acquire skills in their chosen field and to become familiar with the processes and expectations of the workplace. Workplace supervisors are expected to provide on-the-job training and close supervision throughout the student's placement. They also complete a monthly performance appraisal of each student.

17. The program requires a minimum of 20 weeks of professional work experience, and students are expected to attend the placement location for at least 37.5 hours per week.

18. All students qualifying for entry to the Professional Experience unit (that is, having completed all pre-requisite course work) are eligible for a scholarship. If there are fewer scholarships available than students enrolled in the unit, then the scholarships will be allocated on a needs basis by the Professional Experience unit co-ordinator.

19. The amount of each scholarship is currently approximately \$9,000 over the period of the program. The scholarship is paid by the University directly to the student, on a fortnightly basis.

20. Students are enrolled with the University as full time students while undertaking this unit, but receive a discount on their services and amenities fee to recognise that they are completing their studies off-campus and do not utilise campus amenities and facilities. Students are full-time students for the purpose of calculating the funding that the University receives under the *Higher Education Funding Act 1988*.

21. The intention of the scholarship is to assist students with the costs associated with attending a workplace for professional experience, which often includes living away from their normal place of abode for a period of six months.

22. All funds for the scholarships comes from sponsoring organisations, typically about ten sponsors at any time. Sponsors are generally organisations that would employ Geomatics graduates, and they normally accept students on placement for the program.

23. However, the sponsors take no part in selecting scholarship recipients or in choosing students for placements. They do not identify individual students when providing scholarship funds.

24. Organisations hosting placements may request students with particular skills, and may recommend that the students move to another organisation during the Professional Experience unit to ensure that the student is exposed to an appropriate mix of professional experience during the semester. Some students may be placed with non-sponsoring organisations.

25. The university retains a percentage of sponsors' contributions to use in special circumstances where a student may have unusually high expenses, for example when they are placed interstate. In such

cases, the university may provide funds to individual students for airfares or additional expenses.

26. Students are not required or expected to provide services to the University either during or after completion of the Professional Experience unit.

27. Students are not required to accept employment with any sponsoring organisation after completion of the Professional Experience unit. Nor are sponsoring organisations required to offer employment to any students.

Ruling

28. The payments made as described in paragraph 19 of this Ruling to full-time students awarded a University of Tasmania Bachelor of Geomatics Professional Experience Scholarship are considered ordinary income and are 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

29. 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

30. 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).

31. 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.

32. Payments made by the University under the University of Tasmania Bachelor of Geomatics Professional Experience Scholarship are considered to be ordinary income as they are periodical payments and are depended upon by the recipient (*Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652).

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

Exempt income

34. 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.

35. 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.

36. 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;
- they are not subject to the exceptions set out in section 51-35 of the ITAA 1997.

The three conditions are discussed below.

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

37. Yes. The scholarship will only be awarded to students enrolled for the Professional Experience unit which must be completed on a full-time basis. Part-time students are required to become full-time students for the semester in which they are enrolled in the Professional Experience unit.

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

38. 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'.

39. 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...'.

40. 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) (*Halls case*).

41. The scholarships are made available each year to students who enrol in the Professional Experience unit in the Bachelor of Geomatics degree course. If there are insufficient funds to pay a scholarship to all students, then scholarships are allocated on a needs basis. The student scholarship is granted by the University from a fund derived by contributions from sponsoring organisations. Sponsoring organisations do not directly identify students when providing the scholarship funds and do not participate in student selection for the scholarships or for placements.

42. 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 *Halls' case* held that research conducted under supervision at a university is institutional in character and therefore educational.

43. Students undertaking the course are required to complete the Professional Experience unit in the final year of their course, which involves the student working at a sponsoring organisation for a minimum period of twenty weeks. This provides the student with a valuable opportunity to apply their academic knowledge in a working environment.

44. It is accepted that there is an educational purpose in 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?

45. 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?

46. No. The payments made under the scholarship 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?

47. No. The payments are not 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.

48. 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.

49. 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.

50. The students are required to complete the Professional Experience unit which involves working at a sponsoring organisation for a minimum period of twenty weeks so that students can apply their academic knowledge in a working environment. The students are not paid by the sponsoring organisations. It is accepted that this is an integral part of the education of the students and is not employment or a contract for labour by the student with the sponsoring organisation. In addition, students are not required to engage in employment with a sponsor after graduating and sponsors are not required to offer employment to any of the students after graduation from the course.

51. Also, there is no obligation for the student to render any service to the University whether as an employee or under a contract, either while studying or after completion of the course.

Are the scholarships provided principally for educational purposes?

52. Yes. It is accepted that the payments made under the terms of this scholarship 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

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

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Commissioner of Taxation

1 September 2004

Previous draft:

Not previously issued as a draft

- TAA 1953 Part IVAAA
- Copyright Act 1968
- Higher Education Funding Act 1988.

*Related Rulings/Determinations:*CR 2001/1; TR 92/1; TR 97/16;
TR 92/20; TR 93/39;*Case references:**Legislative references:*

- ITAA 1936 Subsec 23(z)
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-20
- ITAA 1997 6-20(1)
- 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)
- ITAA 1997 51-35(d)
- ITAA 1997 51-35(e)
- ITAA 1997 51-35(f)

- *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362 (at 385-6)
- *FC of T v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450 (Halls case)
- *FC of T v. Ranson* (1989) 86 ALR 267; (1989) 89 ATC 4353; (1989) 20 ATR 488
- *Federal Commissioner of Taxation v. Ranson* (1989) 25 FCR 57; 89 ATC 5322; (1989) 20 ATR 1652
- *Re Leitch, deceased*, [1965] VR 204

ATO references

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