



CR 2004/94 - Income tax: La Trobe University - Student Industry Based Learning Scholarship

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Class Ruling

Income tax: La Trobe University – Student Industry Based Learning Scholarship

Contents	Para
What this Class Ruling is about	1
Date of effect	8
Arrangement	10
Ruling	37
Explanation	38
Detailed contents list	61

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 undergraduate students in the School of Business and Technology at the Bendigo Campus of La Trobe University (the University) who receive a La Trobe University Student Industry Based Learning Scholarship. 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 36.

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- this Ruling may be withdrawn or modified.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 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 8 April 2004;

- Draft Industry Based Learning Agreement dated 31 October 2003; and
- Further information provided by the applicant.

11. The University offers a scholarship called the La Trobe University Student Industry Based Learning Scholarship. The University, through its School of Business and Technology at the Bendigo Campus, wishes to assist its students and to foster beneficial links with industry and business organisations.

12. The organisations will fund scholarships to assist undergraduate students enrolled at the University's Bendigo campus in their educational purpose.

13. The University administers the scholarships.

14. The University invoices the organisations who agree to provide funds for such scholarships together with Industry Based Learning.

15. To be eligible to apply for a scholarship, a student must be a full-time student who has achieved a Credit average in his or her course of study to date and who has successfully completed the first two years of study of the Bachelor of Computing or Bachelor of Information Technology degree or who has successfully completed the first three years of study of any double degree that includes the Bachelor of Computing or Bachelor of Information Technology degree.

16. Students will be selected initially by the University on the basis of:

- an application by the student; and
- the academic results of the student.

17. A selection panel consisting of a representative from each of the University and the organisation concerned will then interview applicants selected by the University on this basis. The selection panel interviews the applicants and makes a final selection of the successful students for each year.

18. The program is about helping students link their computing and information technology education with industry requirements. All students in the program are in the midst of their coursework and so they can directly apply the industry knowledge gained to future subjects in their course. The program also provides the student with a valuable opportunity to apply their academic knowledge in a working environment.

19. Students undertake the Industry Based Learning placement during the academic year.

20. The organisations provide funds for two students (or multiples of two) to be placed successively at the organisation. The funds for each scholarship provided by the organisations in any given year will be divided equally between two students.

21. Each student will undertake two placements of twenty weeks duration at two partner organisations. The first placement in any year of the program shall commence in February and conclude in June. The second placement shall commence in July and conclude in November.

22. Funds are only payable to the University in any given year in the event that there are successful applicants for the Program for that year.

23. The stipend of the scholarship will be paid to the student in his or her capacity as a student by the University fortnightly according to the financial system of the University. There are no direct payments by the host organisations to the student. The amount of the scholarship is currently approximately \$16,000 per annum. The scholarship is normally shared between two students with each student receiving approximately \$8,000 for each twenty week placement at the partner organisation.

24. The University appoints an academic staff member as the Industry Based Learning Coordinator. The Coordinator liaises with the organisations before the commencement of placements to make arrangements for supervision of the student. The organisations are responsible for supervision of the student on placement at the organisation.

25. The Coordinator monitors the student's progress at regular intervals during placements to ensure:

- that the learning program undertaken by the student is appropriate; and
- that the student is progressing satisfactorily.

26. The Coordinator maintains regular contact with the student through progress reports and visits to the student while on placement. The Coordinator is also responsible for the resolution of problems raised by the student.

27. The student's performance will be assessed according to University assessment procedures and on the basis of the organisation submitting:

- progress reports to the coordinator as requested by the University or as necessary throughout the placement period; and
- a final report to the coordinator of the placement.

28. The organisations provide an orientation to students on commencement of the placement, which includes information, instruction and training as necessary to enable students to perform the placement activities in a safe manner.

29. The organisations will provide a program of learning to the student appropriate to the content of the course accreditation document.

30. The student at all times while on placement remains subject to the Statutes and Regulations of the University.

31. The award of a scholarship shall carry no obligations on the part of the student towards the organisations apart from those set out above.

32. It is not a requirement of, or condition of the scholarship that the student becomes an employee of the organisations either during or after their undergraduate course. The organisations have no obligation to employ any student who completes the program.

33. The University will arrange appropriate student accommodation for students who are on placement outside of Bendigo. For placements outside of Bendigo, the organisation will pay the University for the cost of such accommodation.

34. A scholarship may be terminated by the University where a student fails or does not, for any reason, satisfactorily complete an Industry Based Learning subject.

35. The number of students granted the scholarship varies from year to year.

36. The organisations are responsible for all public liability and workcover insurance.

Ruling

37. The payments made as described in paragraph 23 of this Ruling to full-time students awarded a La Trobe University Student Industry Based Learning 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

38. 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

39. 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).

40. 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.

41. Payments made by the University under the La Trobe University Industry Based 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).

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

Exempt income

43. 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.

44. 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.

45. 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 scholarship holder's full-time students at a school, college or university?

46. Yes. The scholarship will only be awarded to a student who has achieved a Credit average in his or her course of study to date. The student must also have completed the first two years of study of the Bachelor of Computing or Bachelor of Information Technology degree or who have successfully completed the first three years of study of any double degree that includes the Bachelor of Computing or Bachelor of Information Technology degree. These courses are only offered by La Trobe University on a full-time basis.

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

47. 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'.

48. 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...'.

49. 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*).

50. The scholarships are made available each year to eligible students. Eligible students are full-time undergraduate students who have achieved a Credit average in their course of study to date and have successfully completed the first two years of study of the Bachelor of Computing or Bachelor of Information Technology degree or who have successfully completed the first three years of study of any double degree that includes the Bachelor of Computing or Bachelor of Information Technology degree. Students are short listed

by the University on the student's application and their academic results. Students short listed by the University are then interviewed by a selection panel which makes the final selection of successful students each year for the scholarship. Sponsoring organisations participate in student selection for the scholarship by having a representative on the selection panel. The student scholarships are granted by the University from funds provided from sponsoring organisations.

51. 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.

52. Students undertake the Industry Based Learning placement during the academic year. A partner organisation normally provides funds for two twenty week placements allowing two students to be placed successively at the organisation. The first placement in any year of the program commences in February and concludes in June. The second placement commences in July and concludes in November. This provides the student with a valuable opportunity to apply their academic knowledge in a working environment.

53. 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?

54. 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?

55. 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?

56. 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.

57. 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.

58. The students undertake the Industry Based Learning placements during the academic year. Each placement at the partner organisation is for a 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.

59. 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?

60. 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

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

	Paragraph
What this Class Ruling is about	1
Tax law(s)	2
Class of persons	3
Qualifications	4
Date of effect	8
Arrangement	10
Ruling	37
Explanation	38
Ordinary income	39
Exempt income	43
Are scholarship holder's full-time students at a school, college or university?	46
Are payments made by way of scholarship, bursary, educational allowance or educational assistance?	47
Do the exceptions in section 51-35 apply?	54
<i>Are the payments Commonwealth education or training payments?</i>	55
<i>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?</i>	56
<i>Are the scholarships provided principally for educational purposes?</i>	60
Detailed contents list	61

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<i>Previous draft:</i>	- postgraduate research
Not previously issued as a draft	- scholarships
<i>Related Rulings/Determinations:</i>	<i>Legislative references:</i>
CR 2001/1; TR 92/1; TR 92/20;	- ITAA 1936 23(z)
TR 93/39; TR 97/16	- ITAA 1997 6-5
	- ITAA 1997 6-5(1)
<i>Subject references:</i>	- ITAA 1997 6-20
- exempt income	- ITAA 1997 6-20(1)

- ITAA 1997 Div 51
- ITAA 1997 51-1
- ITAA 1997 51-10
- ITAA 1997 51-10 item 2.1A
- 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)
- Copyright Act 1968
- TAA 1953 Pt IVA

Case references:

- *Chesterman v. Federal Commissioner of Taxation* (1923) 32 CLR 362

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- *FC of T v. Hall* (1975) 6 ALR 457; 75 ATC 4156; (1975) 5 ATR 450
- *FC of T v. Ranson* (1989) 86 ALR 267; 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

Other references:

- *The Macquarie Dictionary*, 2nd Revised Edition