

# ***CR 2004/95 - Income tax: La Trobe University - Student Industry Cadetship Program Scholarship***



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## Class Ruling

### Income tax: La Trobe University – Student Industry Cadetship Program 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

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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 full-time students in the faculty of Science, Technology and Engineering at La Trobe University (the University) who receive a La Trobe University Student Industry Cadetship Program 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 33.

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- this Ruling may be withdrawn or modified.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

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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

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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 2 April 2004;
- Industry Cadetship Agreement;

- Industry Handbook – Industry Cadetship program; and
- Further information provided by the applicant.

11. This arrangement is called the La Trobe University Student Industry Cadetship Program Scholarship. The University through its faculty of Science, Technology and Engineering 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 within the faculty of Science, Technology and Engineering at La Trobe University in their educational purpose and in the enhancement of the students' practical training.

13. The University will administer such scholarships.

14. The University invoices the organisations who agree to provide funds for the scholarships together with industry based learning.

15. To be eligible to apply for a scholarship, a student must be enrolled as a full-time student at La Trobe University and currently studying a course within the faculty of Science, Technology and Engineering.

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 organisation 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 science, computing or engineering education with industry requirements. All students in the program are in the midst of undergraduate or post graduate coursework and so they can directly apply the industry knowledge gained to future subjects in their course.

19. Students undertake the Cadetship during vacation periods. Alternatively, students may defer their studies during the penultimate year (but remain enrolled students) and undertake a Year-in-Industry Cadetship during this time. Some students will start with an organisation during the break and continue working on the project one day per week. There are seven options available that cover both short and long term placements and can be structured to the needs of the organisation.

20. Each scholarship awarded is tenable for an agreed period which may include the mid year and/or end of year vacation periods or another agreed time frame.

21. The organisation agrees to commit to the University a specified sum for the specified period for a Cadetship Program to be conducted over a period to be agreed to by the parties. This sum includes a grant of a sum per week per scholarship to the University to administer the Program.

22. 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 organisation to the student. The stipend varies according to the length of the Cadetship. The University has recommended a stipend of \$370 per week for short placements (up to about four months) and \$460 per week for students doing the Year-in-Industry Cadetship. However, some host organisations may decide to offer a higher scholarship rate and this is more likely to occur with the shorter Cadetships. The students only get paid a stipend for the time they attend the industry placement which usually occurs during breaks.

23. The University appoints an academic staff member as the Cadetship Program Coordinator. The Coordinator liaises with the organisation before the commencement of placements to make arrangements for supervision of the student. The organisation is responsible for supervision of the student on placement at the organisation.

24. 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.

25. 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.

26. The student's performance will be assessed on the basis of site visits by the coordinator and reports including:

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

27. The organisation will provide a program of work experience and learning to each student appropriate to the business of the organisation and relevant to the student's course of study.

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

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

30. It is not a requirement of, or condition of the scholarship that the student becomes an employee of the organisation either during or after their undergraduate course.

31. A scholarship may be terminated by the University, in consultation with the organisation where a student fails or does not, for any reason, satisfactorily complete the Cadetship Program.

32. The number of students granted the scholarship varies from year to year but the intake is generally around thirty-five students.

33. The organisation is responsible for all public liability and workcover insurance.

## **Ruling**

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34. The payments made as described in paragraph 22 of this Ruling to students awarded a La Trobe University Student Industry Cadetship Program 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**

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35. 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**

36. 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).

37. 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.

38. Payments made by the University under the La Trobe University Student Industry Cadetship Program 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; (1989) 89 ATC 5322; (1989) 20 ATR 1652).

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

## **Exempt income**

40. 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.

41. 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.

42. 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?**

43. Yes. The scholarship will only be awarded to students enrolled at La Trobe University and currently studying a course within the faculty of Science, Technology and Engineering and the students are full-time students at La Trobe University.

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

44. 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’.

45. 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...’.

46. 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*).

47. The scholarships are made available each year to all full-time students who are enrolled at La Trobe University and currently studying a course within the faculty of Science, Technology and Engineering. The student scholarship is granted by the University from funds provided by the sponsoring organisation. After the initial selection of students by the University, sponsoring organisations participate in student selection for the Cadetship by assisting in interviewing and assessing an applicant’s suitability for the program.

48. 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.

49. Students undertaking the program are required to undertake the Cadetship during vacation periods or alternatively undertake a Year-in-Industry Cadetship during their penultimate year of studies. The Industry Based Learning segment involves the student being placed at a sponsoring organisation. This provides the student with a valuable opportunity to apply their academic knowledge in a working environment and apply the industry knowledge gained in future subjects in their course.

50. 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?**

51. 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?***

52. 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?***

53. 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.

54. 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.

55. Students undertaking the program are required to undertake the Cadetship during vacation periods or alternatively undertake a Year-in-Industry Cadetship which involves being placed at a sponsoring organisation 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 placement 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.

56. 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?***

57. 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**

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

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**Commissioner of Taxation**

1 September 2004

<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
CR 2001/1; TR 92/1; TR 92/20;	- TAA 1953 Pt IVAAA
TR 93/39; TR 97/16	
<i>Subject references:</i>	<i>Case references:</i>
- exempt income	- <i>Chesterman v. Federal</i>
- postgraduate research	Commissioner of Taxation (1923)
- scholarships	32 CLR 362
	- <i>FC of T v. Hall</i> (1975) 6 ALR 457;
	75 ATC 4156; (1975) 5 ATR 450
	- <i>FC of T v. Ranson</i> (1989) 86 ALR
<i>Legislative references:</i>	267; (1989) 89 ATC 4353; (1989)
- ITAA 1936 23(z)	20 ATR 488
- ITAA 1997 6-5	- <i>Federal Commissioner of</i>
- ITAA 1997 6-5(1)	<i>Taxation v. Ranson</i> (1989) 25 FCR
- ITAA 1997 6-20	57; (1989) 89 ATC 5322; (1989) 20
- ITAA 1997 6-20(1)	ATR 1652
- ITAA 1997 Div 51	- <i>Re Leitch, deceased</i> [1965] VR 204
- ITAA 1997 51-1	
- ITAA 1997 51-10	<i>Other references:</i>
- ITAA 1997 51-10 item 2.1A	- <i>The Macquarie Dictionary</i> , 2nd
- ITAA 1997 51-35	Revised Edition
- ITAA 1997 51-35(a)	
- ITAA 1997 51-35(b)	
- ITAA 1997 51-35(c)	

## ATO references

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